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(re)Constructing a Landmark: A Rhetorical Analysis of Brown v Board of Education at Fifty

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ABSTRACT

This dissertation examines the landmark *Brown v. Board of Education* case on the occasion of its fiftieth anniversary with emphasis on its civic and social rhetorical functions. The analysis focuses on the two week period leading up to the fiftieth anniversary and the dedication of the Brown v Board of Education National Historic Site in Topeka. Data was gathered from various web sites related to the National Historic Site and the events in Topeka on the weekend it was dedicated, and from database records of national and international news sources. These materials were analyzed in three categories beginning with the Site itself and moving outward from Topeka to the national media response. The author argues that *Brown* functions in two ways that rival its function as law: first, as a tool of statecraft, a symbolic representation of America's highest ideals around which community is built through epideictic performances; and second as a dialectic, a proposition around which there continues to be an asynchronous conversation on how to achieve, or continue to move toward, the promise of *Brown*. Understanding the reconstruction of *Brown* at its fiftieth anniversary and the continued need for rhetorical efforts to bring about its promises underscores the value of studying judicial rhetoric from a rhetorical perspective, both to understand its civic and social function and to recognize the limits of law to achieve social change.

(re)Constructing a Landmark:
A Rhetorical Analysis of
Brown v. Board of Education
At Fifty

A Dissertation
Presented in
Partial Fulfillment of the Requirements
for the Doctor of Philosophy in
Composition and Cultural Rhetoric

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Chapter One:

“For the Better and Forever”: *Brown* Turns 50

On Monday, May 17, 2004, President George W. Bush traveled to Topeka, Kansas, the first time a sitting president had visited the city in a decade. Although it was an election year, Bush was not making a campaign stop. He was there to speak at the opening and dedication of the Brown v. Board of Education National Historic Site, an event that drew many national leaders as well as thousands of visitors. Earlier in the day, Kansas governor Kathleen Sebelius held a proclamation ceremony on the steps of the Kansas Statehouse, with Senator John Kerry, then the presumptive Democratic candidate for president, speaking after her. This marked the first time presidential candidates from both major political parties had ever visited Topeka during an election year, let alone on the same day. Many other national political and civil rights leaders were present, along with thousands of visitors and resident spectators, for a day of commemorative ceremonies all focused on the landmark decision known as *Brown v. Board of Education of Topeka*.

The dedication of the Brown v Board of Education National Historic Site was timed to coincide nearly to the minute with the fiftieth anniversary of the decision’s announcement in the Supreme Court in 1954. It constituted the high point of a year-long series of events commemorating the original decision and sparking a widespread conversation about the decision, its legacy, and its meaning for the future in both academic and public forums. One such event took place at Syracuse University in April, just a month before the dedication weekend in Topeka. Throughout the daylong conference, panels and discussion groups focused on the historical events leading up to the original decision, the role of the attorneys and social scientists in the case, the progress made toward equality in

education and racial justice at all levels of American society, and individual experiences in the post-*Brown* society. The keynote address featured Linda Brown and Cheryl Brown Henderson, daughters of Oliver L. Brown, who became the lead and named plaintiff in the *Brown* case. The Brown sisters visited many events that year, both to discuss the impact of the decision on their family and to further the mission of The Brown Foundation for Educational Equity, Excellence and Research, which they helped establish as a “living tribute” to the plaintiffs and attorneys in the *Brown* decision (About).

The conference events at Syracuse read as a microcosm of the hundreds of newspaper articles, historical displays, re-enactments and other events that took place that spring. Earlier in the year, Bush had declared the theme of National Law Day for 2004 to be “To Win Equality by Law: *Brown v. Board of Education* at 50,” and bar association luncheons across the country featured a range of speakers from members of the original legal team to contemporary judges to the Brown sisters discussing the history and impact of the *Brown* decision. The Library of Congress opened a special six-month long commemorative exhibition called “With An Even Hand: *Brown v. Board* at 50.” The opening included a series of lectures, concerts and films focused not just on the *Brown* decision, but also on the civil rights movement as a whole. The AARP, one of the sponsors of the exhibit, marked the year with its “Voices of the Civil Rights Project,” an oral history project that would become a permanent part of the Library of Congress collection on its completion. NPR radio host Tavis Smiley broadcast his show live from the Turpin Lamb Theater at Morgan State University in Maryland, interviewing members of the original legal team, contemporary legal scholars and other civil rights activists. Law schools held conferences to assess the progress made toward equality in education and racial justice at all levels of

American society. Surviving members of the original legal team published memoirs, while contemporary legal scholars convened to re-write the Opinion to what they thought it *should* have said. In the composition and rhetoric field, Catherine Prendergast won a national book award for her analysis of *Brown* and its role in literacy achievement, while another group of rhetoric scholars led by Clarke Rountree published a collection of essays discussing the role rhetoric played in *Brown*, from its roots in the nineteenth century decision in *Plessy v. Ferguson* through the 1957 decision in *Cooper v. Aaron*. In the week before the anniversary date, major newspapers across the country carried special sections detailing the history of the case and offering contemporary opinions on the state of education and racial equality.

Not all of the publicity was positive. A *New Yorker* article asked “Did *Brown* Matter?” (Sunsten). A series of books published that year carried titles expressing disappointment with the outcome of *Brown*, using phrases like “unfinished agenda” (Anderson and Byrne), “unfinished legacy” (Rhode and Ogletree), “troubled legacy” (Patterson) and “unfulfilled hope” (Bell). Many writers decried the degree of segregation that existed, although not by force of law, in schools all through the country. Some newspapers ran extensive feature stories describing the challenges and inequalities still existing long after *Brown* was decided. Others took the occasion to remark on social and economic inequality in America, and many walked the fine line between recognition for the great promises of *Brown* and the lack of achievement toward those goals. Even in the speeches in Topeka, these phrases are often repeated as the speakers differentiated between the achievement the decision represents and the actualization of that achievement.

This project took shape in response to the disparity in these responses to *Brown's* fiftieth anniversary. It began late in 2002, when the College of Law at Syracuse University invited Bell to give a lecture based on his forthcoming book. In his lecture that day, titled "The Mesmerizing Effects of Racial Landmark Cases," Bell explained why he had come to believe that *Brown v. Board of Education* had been wrongly decided, how his thinking had changed from his early career as a civil rights lawyer. He said the problem with decisions such as *Brown* was they mesmerized people into believing that because the Supreme Court had ruled, the problem was solved; an assessment that *Brown's* first fifty years clearly showed, by his reckoning, to be incorrect. By the spring of 2004, Bell's disappointment was being echoed in several places, including remarks made during Syracuse University's commemorative day, when Professors Linda Carty and Paula Johnson offered their reflections on the decision and its history, concluding that they were "less inclined to celebrate this 50th anniversary of the decision, than to commemorate the significance of what it could still mean for this society." Initially, I wanted to understand this disappointment, to see why so many believed *Brown* had fallen short. Eventually, this led to the larger question of why anyone expected *Brown*, or any other Supreme Court decision, to accomplish so much in the realm of social change. The decision was a necessary step for the elimination of formal segregation in education and all other arenas, but the Court offered no specific action to be taken, no specific deadline, and no penalty for non-compliance. The Opinion made a declarative statement, but offered little that could be seen as persuasive. If it was, as Ann Gill argues, "a necessary but not sufficient condition for social change," what would be sufficient? (145).

In response to that question, this project seeks to accomplish two related tasks: to analyze the events and discourse of the fiftieth anniversary to show how *Brown* has functioned epideictically, to determine what values were being celebrated, how those values were being presented, the kind of consensus they were attempting to build and in what audiences; and to analyze the larger implications of *Brown* in understanding law as a social construction, and judicial reasoning as a product of the evolving values of the society from which it emerges. I'll argue that *Brown* has functioned, and continues to function in two very different but equally important ways: first, as a tool of statecraft, as the symbolic representation of a nation continually striving to achieve its own founding ideals, and as the unifying standard by which no one can claim membership in the community without giving assent to its goals; and second as a dialectic, a national asynchronous conversation about how to move from the general ideals espoused in our founding documents to the specific ways of being in the world together that would actualize those ideals. I'll argue that the Brown v Board of Education National Historic Site provides an important means for preserving the darker images of the Civil Rights era, that by enrobing these images in an educative function and in celebrating those who overcame the violence to prevail in achieving the legal victory, the Site plays an important part in both the statecraft and dialectical functions. I'll argue also that however significant the legal victory, there is a gap between the declaring of a law and the realization of it, and that this gap is, to paraphrase Gerald Hauser, a civic need that rhetoric, and epideictic rhetoric in particular, can fill (6). And finally, I'll argue that scholars and teachers in composition and rhetoric can and should reclaim judicial rhetoric, and specifically the texts that are judicial opinions, as a proper subject of their consideration, and that in so doing help to demystify the law, to help return

the law to the people in the communities it represents by providing them with the means to first see the values being promoted within the legal discourse, and to participate in both the legal process and policy making more effectively by engaging with the statecraft and dialectical processes of their own communities. This first chapter provides some context and framing for the chapters that follow, first by providing a bit of background for the original *Brown* decision, its early reception, and connections to the fiftieth anniversary discourse; then by discussing the corpus and methodology of study; and finally by reviewing the literature informing my analysis. The final portion of this chapter introduces the key elements of those that follow.

The *Brown* decision was a roll-up of five separate cases: *Brown v. Board of Education of Topeka*, from Kansas; *Briggs v. Elliott*, from South Carolina; *Davis v. County School Board of Prince Edward County*, from Virginia; *Gebhart v. Belton*, from Delaware; and *Bolling v. Sharpe* from the District of Columbia; each focused on a different aspect of inequality in the school systems there. Originally known as the Consolidated School Segregation cases, the combined case was named for the lead plaintiff in the case emerging from Kansas, that of *Oliver L. Brown, et al., v. Board of Education of Topeka*. The Kansas case was unique in that it was the only case where the segregated schools had met the test of being substantially equal, the key element of the “separate but equal” law that was being challenged. The “separate but equal” standard had come from the 1868 ruling in *Plessy v. Ferguson*, in which the Court had ruled that segregated facilities did not violate the Constitution as long as those facilities were provided on equal terms. This was the claim that *Brown* refuted, or rather set aside, as the justices unanimously ruled that state-mandated segregation in public schools was unconstitutional. The two parts of the ruling were issued a full year

apart. The first and more famous part was the declarative ruling that offered the key phrase “we conclude that in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal” (*Brown* 483). The second part, known as *Brown II*, came after a new round of arguments before the Court about potential remedies. Chief Justice Earl Warren was careful to separate the remedy portion of the ruling from the declarative portion, and set aside the need to persuade the audience that the *Plessy* ruling was in error by simply stating, “we cannot turn back the clock” but rather “must consider public education in the light of its full development and its present place in American life” (*Brown* 492). After the second ruling, in which the Court provided the standard of “all deliberate speed,” some school districts began the process of dismantling their segregated structure while others simply ignored the directive, using the phrase “all deliberate speed” as a license to contemplate more than act.

Controversy over the *Brown* decision began almost as the second opinion was published. On the one hand, the decision was hailed as the defeat of Jim Crow and legalized state-imposed segregation. On the other hand, legal scholars challenged its validity as law, the use of the social science evidence was heavily criticized both in legal circles and the popular press, and southern political leaders denounced the Court for overstepping its authority. Senator James Eastland said the decision was “based on the writings and teachings of pro-communist agitators and other enemies of the American form of government” (Patterson 88). Southern senators, led by Strom Thurmond of South Carolina and Harry Byrd of Virginia, produced the petition of Massive Resistance in the United States Senate, denouncing the decision as a “clear abuse of judicial power” and promising to resist its implementation (Patterson 88, Kluger 752). As Virginia moved to participate in

the Massive Resistance, the Board of Supervisors in the Prince Edward School District, one of the named districts in the *Brown* decision, closed their public schools to avoid integration, a closure that would last five years. Herbert Wechsler, a nationally top-ranking professor at Columbia Law School and early admirer of Charles Hamilton Houston, the first architect of the NAACP's legal efforts culminating in *Brown*, claimed the decision violated the legal standard of neutral principles. Governors such as Orval Fabus of Arkansas and George Wallace in Alabama found political gain in opposing the implementation of the *Brown* decision.

The Supreme Court also struggled with the implications of its ruling in *Brown II*. In ruling on what was and was not acceptable in terms of compliance strategies, the Court allowed for plans such as the mandatory school busing programs that caused social upheaval in Boston and other cities (*Swann v. Mecklenberg*), but ruled that inner city school districts could not be joined to suburban school districts for purposes of evaluating compliance with the ruling (*Milliken v. Bradley*). Affirmative Action programs were initially approved by the Court (*Regents of the University of California v. Bakke*), but in 2003, Justice Sandra Day O'Connor, writing for the fractured Court in the Michigan Affirmative Action cases, expressed optimism that within twenty-five years affirmative action programs would no longer be needed to establish equality in education. Even in the Court, competing narratives of how to best achieve *Brown's* ideals continued.

Despite the historical tensions and the uneasiness over its effectiveness, the answer to *The New Yorker's* question is clearly yes, *Brown* mattered. That there was a public recognition of its 50th anniversary, a unique recognition for a legal decision, is itself proof that the decision had resonance beyond its function in law: not just as legal precedent,

though it is that; not just as successful argument, though it is that, too; and not just as a measure for educational equality, though measure by its promise we surely do. What the fiftieth anniversary captured was the essence of *Brown* as an idea, a concept, a representation of the highest of American ideals and values. To invoke *Brown* is to encapsulate in a single word the struggle for racial equality, the Civil Rights Movement and all the energy, activism, violence and hope that was part of it, the ongoing efforts to achieve equality in education, and the continuing quest for the just society envisioned in America's founding ideals.

The link between the *Brown* decision and the civil rights movement is a significant measure of its overall function. Some scholars have argued that *Brown* had no direct connection to the later activities of the civil rights movement. But Catherine Prendergast stated the sentiment shared by many other scholars, that "as a result of the civil rights movement, literacy and racial justice have been intertwined in the American imagination" and that "it was the *Brown* decision that fixed the notion of education as a path to equal opportunity in the minds of Americans" (2). These overlapping and intertwined ideas are the foundation of *Brown's* promise, the hope-filled standard by which education equality and racial justice are measured. This measurement, the standards by which we assess the success or failure of equality efforts, shifts over time. As Justice David Souter expressed in his commencement address at Harvard in 2010, the measure of success in 1954 was different than the measure in 2004, in part because of the time that had elapsed and the expectations for progress that accompany that time span, but also because each level of achievement changes the standard for the measure. Souter observed "the judges of 1954 found a meaning in segregating the races by law that the majority of their predecessors in

1896 did not see.” Similarly, the judges of 2003, in the Michigan cases, saw a standard for racial consideration in school admission that could not have been contemplated by the judges of 1954. Americans who are not old enough to remember the years of Jim Crow segregation have a different frame of reference for the ruling in *Brown* and the initiatives created to fulfill its promise than do those who lived through those years.

So the public ceremonies throughout the anniversary year, and particularly those in Topeka, worked to build a common sense of what *Brown* means going forward, setting the boundaries of virtuous citizenship through praise and blame elements and the recognition of honorable and shameful deeds and events. President Bush spoke for only about eleven minutes, but in that time he covered the history of race relations in America leading up to the *Brown* decision, beginning with a reference to slavery, moving through the “sorry structure” of Jim Crow segregation, and on to the courage of the plaintiffs and attorneys in the *Brown* case, the “good souls” who worked to overturn the “great wrong” that had allowed segregation. In this movement between praise and blame, Bush spoke to the common understanding of his audience, some of whom had lived in the Jim Crow era, and some of whom had been the children who first integrated their local school systems. The speech married two forms of epideictic rhetoric, the panegyric or festival speech, and the eulogy or funeral speech. The festival aspect of the speech fit the circumstances, with the ceremonies taking place both in Topeka and across the country to commemorate *Brown*’s anniversary, and with the new site being dedicated, being occasions for ritual and speeches celebrating the state and its leaders. The eulogistic element came from acknowledging the efforts of those now dead, the “heroes,” such as Thurgood Marshall and Charles Hamilton Houston, who worked to end the “system of racial oppression,” heroes that Bush set up as

the victors over “cruel and petty men.” These themes met with approval from Bush’s immediate audience because they already shared this vision of the *Brown* decision. This was true throughout Topeka as other speakers spoke to that same audience, and to other groups at other events throughout the city. And in the discourse surrounding the anniversary, the many books and hundreds of newspaper articles discussing its history and its aftermath, only one voice, Derrick Bell’s, openly declared that *Brown* had been wrongly decided. This was a considerable departure from the reception to the original decision, when political leaders did not hesitate to condemn the decision or the reasoning behind it.

This shift shows how the *Brown* decision has moved into the position Dr. Whately called “Presumption,” the side of a case that is already accepted, and against which any proposed alternative bears the “burden of proof” (73-4, 76). When *Brown* was decided, *Plessy v. Ferguson* held the position of Presumption¹ and therefore *Brown* bore the “burden of proof” that the existing structure should no longer exist. Part of *Brown*’s significance was and is due to it overturning that decision. The significance of overturning an existing Supreme Court ruling comes from the long accepted legal principle of *stare decisis*, meaning “to abide by, or adhere to, decided cases” (Black 978). This principle gives the law stability and a certain amount of efficiency over time, as courts respect and rely upon decisions made by earlier courts when faced with similar legal questions, and it is similar to Dr. Whately’s notion of Presumption. In the *Brown* case, meeting the burden of proof in Court proved easier than meeting the same test in society, because the communities involved had achieved “communion,” Chaim Perelman and Lucy Olbrechts-Tyteca’s term for a “community’s agreement on questions of value,” on the values and social structures

¹ The capitalization is retained in keeping with Dr. Whately’s reference.

emerging from the formal system of segregation (Graff and Winn 46). The values in the segregated states came into direct conflict with the values held by the advocates in the *Brown* cases. Historian James Cobb described *Brown* as a competition between “folkways” and “stateways,” where the stateways, or the initial ruling and later efforts to force integration, got ahead of the folkways, or the acceptance in the minds of the affected citizens of the ruling and its implementation (8). In some ways, that distinction can be seen in the two-part nature of the decision, where the first part met the needs of the state, the nation, and its audience at the time, while the second anticipated the needs of the “folk,” the separate states, school systems and individuals responsible for carrying out the decision. The *Plessy* decision quickly fueled segregation laws and practices throughout the South, because it added the imprimatur of the Supreme Court to existing social tendencies and the desires of the dominant white population throughout the South. Compliance with the *Brown* decision was delayed by a decade or more in many places because it faced the uphill struggle of dismantling social custom and practice. *Brown* was without question a pivotal moment in the history of education and civil rights, but it was also a proclamation that demanded enormous social change from a large portion of the country.

In the speeches given at *Brown*'s fiftieth anniversary, the audiences were presented with praise and blame for particular individuals and situations that worked to increase the sense of “communion” around the values put forth in the *Brown* decision. They were not asked to judge or to make a decision about the significance of the decision; rather the events presented the decision to the public as significant, as good for all America, and as a reaffirmation of America's ideals. The speeches show that over its first fifty years, *Brown* has grown from being a landmark legal case to an ideograph, the term Michael Calvin

McGee uses to describe a one-word term that captures an entire ideology and functions as both a symbol and carrier of that ideology. In the case of *Brown*, we might name these symbols as equality, justice, and freedom. The rhetorical efforts to increase the audience's mental adherence to these values was necessary because although the legal balance of the burden had shifted, and the terms had changed, the conflict remained: even within the framework of accepting the decision as right, there are still competing narratives as to what it means and how to best achieve its promises.

The Brown v Board of Education National Historic Site invites its visitors to participate in the ongoing conversation about how to achieve those promises in several ways, and provides the entry point for this analysis. The Brown Foundation's founders wanted to create a living memorial, one that would educate visitors about the complexities and details of the *Brown* cases, and one that would reach out to a wide range of publics, inviting them to be a part of the ongoing achievement of *Brown's* ideals. The physical site does this through galleries that include more than just the legal process; they set that process in the larger social factors at work both before and after the decision. The Brown Foundation also provides a detailed online tour for those who haven't yet made the journey to the physical location. The online tour provides images from all of the galleries, a detailed floor plan, explanations and photographs for the restoration process and a history of how the property became a National Historic Site and a National Park. The online tour provided the basis for the analysis in this project. In either the physical or online presentation, the images and artifacts displayed help a contemporary visitor experience a bit of "how it was then," but they also carefully construct the limits of discussion about the decision's legacy to match the state of Presumption it has assumed. Under the auspices of the National Park

Service, the information presented in the Site's galleries takes on the mantle of the "official history," and establishes the way the decision will be recounted and set in public memory.

Carol Blair argued that public memory sites are among the most rhetorical of all public places, that such sites are "destinations of historical significance and civic socialization, summoning tourists as citizen pilgrims to partake of their typically inspirational messages" (2). The inspirational messages within the Brown v Board of Education National Historic Site come in mixed form, with artifacts that proclaim the victory in the Court's ruling and more chilling displays related to carrying out that ruling, including the Tunnel of Courage, where visitors hear the kinds of racial slurs and angry epithets that are largely absent from contemporary discourse about racial issues. Keeping these harsher images in public memory is one of the key functions of this Site, an effort to avoid what Stephen Browne argued was the potentially fatal error of erasing the past. Browne, along with Kendall Phillips and others, also argued that a "healthy and functioning public" requires a capacity for "remembrance together" (Phillips 2). Phillips argued that the notion of public memory is both "the memory of publics" and the "publicness of memory" and each of these can be seen in the functioning of the National Historic Site. Within its galleries are the memories of various publics, as the exhibits carefully present individuals and events related to the *Brown* decision and its aftermath. At the same time, visitors to the galleries are encouraged to participate in the publicness of those memories, which may include their own recollections of the *Brown* era or related events that might be shared in the Reflections gallery.

While Phillips argues that memory is "conceived in terms of multiple, diverse, mutable, and competing accounts of past events," the galleries in this public memory space

offer a fairly unified narrative of history. Thus, the site defines the limits of acceptable discourse about the decision and how to achieve its ideals, in part by omitting exhibits related to those individuals who argued the various cases to uphold the existing law of the land. The Site houses the *Brown* that “we, the State” want to remember, that “we, the State” authorize, so that the public in this particular public memory site is first the public of the collective “we” that is America. This can be seen in the anniversary speeches as well, where the plural first person voice become a unifying theme enfolding hearers in their identity as Americans before anything else, so that the theme of community building and adherence to the idea of *Brown* as a national good are amplified by repetition.

The speeches given by political leaders, including the president, in Topeka provide the next set of texts for this study. The selected speeches were chosen for the status of the speaker, who by rank or reputation carried the authority to speak for “the state” or a significant constituency in it, an authority indicated in part by the availability of their speeches in either written or video form three years after the speeches were given. President Bush’s speech was published by the Federal Document Clearing House and appeared in several newspapers throughout the country, thus appearing in the corpus of article discussed below. His speech is also preserved in video segments in a special in-depth section of the Topeka *Capitol-Journal’s* website. Portions of other speeches given that day, including Governor Kathleen Sebelius’s remarks at the dedication ceremony, also appear on that site. Her remarks at the proclamation ceremony earlier in the day, a ceremony honoring the decision and taking place on the steps of the Kansas Statehouse, were not available in original text but were extensively reported on. The speech given by Senator Kerry at the proclamation ceremony earlier in the day was originally published on

his official website, but has since moved to *The American Presidency Project* website. The Reverend Jesse Jackson's remarks were also taken from the reporting on his sermon and prayer breakfast remarks rather than from original texts. Each of these speakers carried political rank and authority suited to the occasion, and their remarks indicate the state view of *Brown's* meaning at its fiftieth anniversary, while simultaneously calling on "the people" to continue to work to achieve its promises.

The conversation of the people provides the final focal point for this analysis. Having run across *The New Yorker* article noted above in ordinary reading, I wanted to examine other mass media publications to see how *Brown* was being discussed outside of legal scholarship and other academic publications. To maintain focus on the fiftieth anniversary of the decision, but allow for the breadth of media anticipation of that specific date, I limited the news article search to the two-week period from May 1 through May 17, 2004. I chose the *LexisNexis Academic* database in a search of all U.S. Newspapers and Wires (rather than major newspapers or other narrower term) with the search term "Brown v. Board" (quotation marks included). This search returned a total of 1038 articles. These were saved in chronological order in Word documents and read through several times to detect duplications (of which there were several). Notifications or event announcements were dismissed from further review. The remaining articles were annotated based on their focus. Generally, articles that discussed the history of the decision in general terms, or the history of educational change (or lack of) in a particular location were set aside in favor of articles that discussed the meaning of the decision or its significance or the prospects for the future of equality in education or society more broadly. Articles that discussed the anniversary weekend events in Topeka, whether in Topeka based publications or not, were

marked for consideration in relation to the major speeches given that day. The remaining articles were considered as representative of the ongoing national conversation, the dialectical function *Brown* offers. Many of these articles, especially editorials or syndicated columns, displayed an epideictic quality as they offered praise for the decision or those involved in it. To facilitate the selection and classification process, searches within the retrieved articles were conducted looking for such terms as “transform” or “success” or “promise.” These terms did not prove particularly helpful in understanding the national discussion or in understanding what *Brown* has come to mean over its first fifty years, and ultimately the claims made about them emerge from highlighting and notations made over multiple readings of the material.

The analysis that follows is based on three primary areas of scholarship: public memory, a relatively new field of study with an interdisciplinary perspective; epideictic rhetoric and its civic function; and articles and books by rhetoric scholars focusing on the *Brown* decision specifically, and judicial rhetoric more broadly. The starting point for the public memory analysis was the Carrol C. Arnold lecture at the 2006 National Communication Association conference, where Carole Blair presented her study of the Civil Rights Memorial Center in Birmingham, Alabama. Her lecture, titled “Civil Rights/Civil Sites: ‘...Until Justice Rolls Down Like Waters,’” was subsequently published and provided both an inspiration and guide for the analysis of the Brown v Board of Education National Historic Site. In that lecture, she mentioned a forthcoming book that turned out to not get published. However, the search for it led to a collection of public memory essays she co-edited, titled *Places of Public Memory: The Rhetoric of Museums and Memorials*. This

collection, along with one edited by Kendall Phillips titled *Framing Public Memory* provided additional perspectives and guides for the analysis of the historic site.

For scholarship on epideictic rhetoric, I began with Aristotle and his classical division of rhetoric into its three parts, deliberative, forensic or judicial, and epideictic. In this classification, Aristotle associates epideictic with praise and blame, speeches that would identify that which was honorable or shameful, and promote virtue through public displays of honorable deeds and subjects. Such speeches encouraged civic virtue by praising noble deeds done in the service of the state. In the *Nicomachean Ethics*, Aristotle argues that virtue is not natural, that it requires “habituation” and that legislators should urge people toward virtue, exhorting them to what is “fine” (33, 293). The epideictic occasion, whether a funeral oration venerating the dead for their sacrifice for the state or the encomium praising the deeds of a particular person, provided a means for moving the audience in the direction of the virtuous behavior being praised by reinforcing the notion of what civic virtue is.

George Kennedy argues that Aristotle’s classification of the audience for an epideictic speech as that of spectator, with no action to be taken, led to the epideictic becoming a catch-all term for “all forms of discourse that are not specifically deliberative or judicial” (*Rhetoric* 48 n77). The later led to epideictic being associated with poetry and other art forms, separating this category of rhetoric from its deliberative and judicial counterparts. In *The New Rhetoric*, Chaim Perelman and Lucy Olbrechts-Tyteca argue that this dismissal of epideictic’s civic value was an error, and that epideictic is a significant factor in building community and public life. They argued that such speeches tend to “appeal to a universal order, to a nature, or a god that would vouch for the unquestioned,

and supposedly unquestionable, values,” and this appeal helps to “establish a sense of communion centered around particular values recognized by the audience” (52, 51). The epideictic speech takes on an educational quality, and the speaker, having already been commissioned by the audience to speak, becomes an educator (52). Perelman argues elsewhere that epideictic rhetoric is essential to public life because of its role in “bringing about a consensus in the minds of the audience regarding the values that are celebrated” (1388). This new perspective on epideictic’s public function led to a wave of scholarship examining various ways epideictic performances function and offering analyses of several well-known public events in support of these arguments.

For Perelman and Olbrechts-Tyteca, the key element of community building is the shared values around which communion can be established. For Kenneth Burke, the key terms are identification and consubstantiality. Burke argues, “A is *identified* with B” to the degree their interests are joined (*Rhetoric* 20, emphasis in the original). A may need to be persuaded that their interests are joined, and that opens the opportunity for rhetoric. While A and B remain independent entities, their identification with one another makes them “substantially one,” and acting together in the world makes them “consubstantial” through “common sensations, concepts, images, ideas, [and] attitudes” (Burke *Rhetoric* 21). Epideictic rhetoric here performs a similar function to building communion as it offers the terms on which A and B can identify. It also provides the framework for the values, attitudes and ideas that govern the ways individuals act together in their particular communities. Burke argues that “identification is affirmed...precisely because there is division,” and that rhetoricians “proclaim...unity” because men are apart (*Rhetoric* 22). This

argument informs both the analysis of the speeches in Topeka and the news articles published at the anniversary.

Shared values and community building are common themes in a series of scholarly articles on the civic function of epideictic rhetoric. Among the key points made in these articles, Gerald Hauser argues that the ceremonial occasion offers the means to “exhibit knowledge” of shared values, while offering “images of civic virtue through comparison with traits of known actors and rival ways of life” (Hauser 16). Michael Carter argues that epideictic is most successful when it achieves the qualities of ritual, and indeed the events most noted for epideictic speeches tend to be ritualistic in nature, as they clearly were on the occasion of *Brown’s* fiftieth anniversary. Cynthia Miecznikowski Sheard claims that Perelman’s notions of building community are similar to Kenneth Burke’s notion of “bridging our ‘divisions’ through ‘identification,’” and argued that “epideictic...[is] a rhetoric of identification and conformity whose function is to confirm and promote adherence to the commonly held values of a community with the goal of sustaining that community” (766). Richard Graff and Wendy Winn build on Perelman and Olbrechts-Tyteca’s notion of “communion” to argue that “the values lauded in any particular epideictic speech are presumed to command the assent of the audience,” and by doing so lay the groundwork “for future appeals to action” (51). They also draw attention to the power of “value terms...or what Kenneth Burke might call a culture’s ‘god-terms’” (55). Whether such terms are invoked in a speech or proclaimed from a banner hanging from a statehouse column, they have the power to unify to the degree that the audience members feel a part of the culture.

While American culture finds many connections to the Athenian state in Aristotle's time, there are some notable differences having to do with law and governance. In ancient Athens, citizenship was restricted to males born to Athenian parents. The governing structure was a democracy where every citizen, as defined, was expected to participate in the Agora, the deliberative body that among other things debated the ideas that would become policies and laws. When disputes arose over those policies, or someone stood accused of breaking the law, a selected group of citizens formed a jury and applied the forensic elements of rhetoric to determine guilt and the appropriate punishment. There were no professional lawyers or judges; litigants represented themselves. Schools like Aristotle's trained students in the art of persuasive speaking, with emphasis on structures suitable to legal proceedings. Citizens had a direct connection to the law and a more common understanding of it because of their direct participation in creating it. The laws they made were, of course, imposed on those who did not count as citizens with little or no input from them.

In the American form of democracy, citizens do not participate directly in either the deliberative or forensic processes. Instead, representatives elected by the people gather in a range of assemblies from local to federal to create the laws and policies from which court cases develop. The American legal system is a complex layering of local, state and federal laws and courts, and litigants seldom represent themselves except in the most basic and minor of cases. And while this complexity might suggest a fragmented or disjointed legal field laying traps for citizens, the entire system does have cohesion, guided and unified by the Constitution of the United States. For Americans, the "universal order" is provided by the Constitution, the document that has been called "America's civil religion" (Bellah). The

establishment of the Brown v Board of Education National Historic Site was partly the result of a desire to establish public memorials of significant Constitutional events in history. The *Brown* anniversary events, beginning with the theme of National Law Day, all focus on the Constitution, which was fitting considering the *Brown* case, like the *Plessy* case it overturned, called a question of Constitutional right. Whichever side of the argument one considers, the advocates believed they were fighting for a Constitutional right; that the Constitution supported their view of how things should be. Legal scholar Jack Balkin contends that *Brown* became a “beloved political and legal icon” because it represented the “good Constitution”, and the steady development of American ideals in what he calls the “Great Progressive Narrative” (4, 5). This narrative, Balkin explains, presents

America as continually striving for democratic ideals from its founding and eventually realizing democracy through its historical development.

According to the Great Progressive Narrative, the Constitution reflects America’s deepest ideals, which are gradually realized through historical struggle and acts of great political courage. The basic ideals of America and the American people are good, even if America and Americans sometimes act unjustly, and even if people acting in the name of the Constitution sometimes perpetrate terrible injustices. The basic ideals of Americans and their Constitution are promises for the future, promises that the country eventually will live up to, and, in so doing, confirm the country’s deep commitments to liberty and equality (5).

This narrative can be seen most clearly in President Bush’s speech, but the themes are present in many other speeches give through the anniversary year. This interpretation

of how *Brown* has functioned doesn't hold up as cleanly as Balkin suggests, because even with all of the repetition on this theme in the commemorations of the decision, there are also a range of articles from the anniversary month that show good people with good reasons equally committed to such values as liberty and equality and still convinced that *Brown* didn't, and perhaps couldn't help change their culture. The anniversary presented an opportunity for the kinds of ritual events that call for epideictic speeches, those that could meet the need to increase the minds' adherence to ideas in *Brown* to help get folkways to align with stateways, and thus to shape public opinion and ultimately policy actions.

This folkways/stateways disparity represents "the rhetorical boundaries of legal practice," a boundary discussed by Marouf Hasian, Celeste Condit and John Lucaites in their analysis of the *Brown* decision (323). They analyzed the "separate but equal" doctrine to claim that law is "an active and protean component of a hegemonically crafted rhetorical culture," which is to say that law tends to fit with the commonly held values of its community (323). Hasian, Condit and Lucaites view judicial opinions as examples of language-in-action, a term proposed by Lucaites in his 1990 article calling on rhetoric scholars to take up the study of judicial rhetoric. In their 1996 article Hasian, Condit, Lucaites, analyze the "separate but equal" doctrine as an example of their "conception of the rhetorical boundaries of legal practice" (323). They argue that

in practice, law is neither a rationally constructed discourse nor simply a dominant ideology, but rather an active and protean component of a hegemonically crafted rhetorical culture. Through legal argumentation and

debate, various partisan communities make compromises that function as the boundaries within which the law takes on public meaning. (323)

Taking their position as a third way between legal formalism and the “equally complex language of literary and philosophical poststructuralism,” Lucaites, Hasian and Condit argue that “the law exists as part of an evolving rhetorical culture” that “evolve by adapting to changing social, political, and economic exigencies” (326). They argue that the Supreme Court must produce decisions that “are concordant to many disparate interests” while simultaneously “bounded by the limits of an historically particular rhetorical culture” (338). Understanding that the law and judicial opinion rise from rhetorical culture, which is in turn a product of multiple voices competing and compromising within society, they characterize law as a “consensual product of the rhetorical efforts of a variety of public agents” (338). In other words, law emerges from discursive processes as good reasons offered in support of a particular point of view become accepted by others.

This perspective on law is similar to the view taken by James Boyd White, who argues in several places that law should be viewed as a branch of rhetoric. In *Heracles' Bow*, for example, White argues that law is “a social and cultural activity...something we do with our minds, with language, and with each other” (x). He argues that law is “must usefully and completely seen as a branch of rhetoric,” where rhetoric is a “the central art by which culture and community are established,” a “constitutive rhetoric” that “has justice as its ultimate subject” (28). White includes dialectic, in the Platonic sense, as a form of rhetoric, since “it is the establishment of community and culture in language” (39). In his later work, *Justice as Translation*, White offers three perspectives on what law is: “a set of rules issuing from a political sovereign,” such as those “passed by the legislature or articulated in judicial

opinions”; as an “exercise of power by one group in a society over others”; or as a “culture of argument...a language, a set of ways of making sense of things and acting in the world...a set of ways of thinking and talking” (xii-xiii). He suggests reading judicial opinions as “cultural and rhetorical texts...with an eye to the kind of political and ethical community they build with their readers” (xvi). Viewed in this way, judicial opinions are not just logical texts for study by law students, they are texts for study by scholars concerned with language and community – rhetoric scholars.

Stanley Fish also writes about the rhetorical elements in law and literary studies and the intersections between the two. Fish observes “deciding hard cases at law is rather like [a] strange literary exercise,” and the idea of judges being bound by precedent as similar to a chain novel (92). Fish explores the Critical Legal Theory movement, those who hold White’s second perspective on law, and cites an important question for understanding the ongoing debate over *Brown*: “how, in a democratic system, can one justify the fact that a group of men and women, who are appointed for life, pass judgment on the validity of legislation enacted by the elected representatives of the people?” (338). This is the question of agency in Kenneth Burke’s dramatisic pentad, the question of the means for achieving the agent’s purpose. The pentad presents one additional way of analyzing judicial opinion and asking what kind of community is being constituted within it.

With these different perspectives available, it would seem logical to expect law and judicial rhetoric to have become a popular focus of study for rhetoric scholars, but this is not the case. While there are a handful of articles on the *Brown* decision over the past 40-plus years and another handful related to law or judicial rhetoric more generally, these subjects have not received the kind of attention Lucaites called for in the early 1990s when

he noted the gap. Rountree comments in the introduction to *Brown v. Board at 50* that while there had been a lack of rhetoric scholarship in the area of judicial rhetoric over the years, recent years had shown more scholars, *many sporting law degrees*, were taking up this study (xii-xiii, emphasis added). While this trend does bode well for rhetoric scholars interested in analyzing law and judicial rhetoric, it also compounds the notion that one must be educated in the law as well as in rhetoric to contribute to this field, a notion the project will argue is inaccurate. Judicial opinions are, after all, texts; texts that emerge in response to a series of other texts and oral defenses of those texts. While it is the case that the nomenclature of the law is somewhat unique, it is not the case that this language and its interpretation is reserved only to the legal initiate. Several articles written over the first fifty years of *Brown's* existence demonstrate a number of ways judicial opinions can be studied. These articles can be classified in four broad categories: analysis of the arguments leading to the text, the judicial opinion (Souther, Dickens and Schwartz, Diamondstone, Rountree); analysis of the text itself, both stand-alone and as part of a continuum of judicial opinion (Bartness, Bellman, Hasian, Burnett, Mangis, Gill); analysis of the text as an example of a rhetorical practice (Droge, Hasian and Klinger, Dunbar and Cooper, Rountree); and as a case study in a larger field of analysis (Hunsacker, Prendergast).

The chapters that follow incorporate these theoretical perspectives and examples to analyze the three main points of study described above. I begin in Chapter 2 with an analysis of the Brown v. Board of Education National Historic Site. The authorization for the Site set in motion the chain of events, commemorations and writings that culminated in the fiftieth anniversary ceremonies, but getting that authorization also took a coordinated rhetorical effort. I examine the Site from both perspectives, beginning with the efforts to

create it. I argue that the Site came about due to the efforts of a small group of citizens using the available means of persuasion to generate interest and funding for the site, but also that those efforts became successful only when they intersected with the interests of the State. Then I move on to the function of the Site itself, with emphasis primarily on its function as a public memory site, to argue that it serves to reconstruct the *Brown* decision from a controversial and divisive decision to a national social good. The chapter calls attention to the significance of the Site's establishment as a public memorial, as well as its location under the authority of the National Park Service and draws from the work of several scholars on public memory and epideictic's civic function. I also discuss the Site's role in the ongoing dialectic that *Brown* has become, showing how the contents of its galleries not only present a particular view of the decision but also encourage active visitor participation in the ongoing efforts to achieve the promises showcased in those galleries.

Chapter 3 focuses on the events in Topeka on the weekend the Site was dedicated. In addition to the dedication speech by President Bush, I analyze a sermon given by the Rev. Jesse L. Jackson on Sunday, two speeches given by Kansas Governor Kathleen Sebelius – one at the proclamation ceremony at the Kansas Statehouse and one at the dedication ceremony, and one given by Senator John F. Kerry at the proclamation ceremony. These five speeches, given by the highest national and state leaders and a leading figure in the Civil rights movement, offer remarkably similar themes, demonstrating that *Brown*, while still political, is not partisan. Praise for *Brown* at its fiftieth anniversary transcends party affiliations and racial boundaries. I argue that these speeches show *Brown* as a tool of statecraft, a symbol of the best of America's founding ideals employed to present America as a nation of justice and equality both to its citizens and to other nations of the world

presented with the presumption of communal agreement. At the same time, I argue that these speeches highlight the dialectical function *Brown* has achieved. Each of the four speakers, despite very different political party platforms and views of how government and society should be structured, claimed unequivocally that *Brown* was good for the country, that America was a better place because of it. After these similarities, the speeches branch out and present differing views of how to achieve that promise, and it is these differences within agreement that comprise the dialectic. The chapter begins with an examination of the changing view of epideictic's civic value from Aristotle to Perelman and Olbrechts-Tyteca. This is followed by a discussion of scholarship on the civic or public function of epideictic rhetoric by scholars who built on the new theory Perelman and Olbrechts-Tyteca offered. Each of the five speeches is then discussed in light of its epideictic civil function, and the chapter concludes with a discussion of the two-part function of *Brown* in contemporary society.

Chapter 4 moves beyond Topeka to analyze a wide-range of news articles published throughout the country in the month leading to the fiftieth anniversary. These articles show how *Brown's* anniversary was being received by ordinary people, which in turn shows how *Brown* has functioned over time at the "folk" level. Many of the articles are epideictic in nature, some from national leaders and some from journalists, all sharing the same similar theme as the speeches in Topeka, with *Brown* presented as a good decision that made America better. But these articles, which include interviews with local leaders in some of the other cities that were part of *Brown* and include profiles of towns and school districts where the struggle for equal school continues, are more reflective of the dialectical element of *Brown*, showing the many differences both in *how* the decision is perceived and

what it did or didn't accomplish, and the many different views of what is necessary to achieve its promises. Drawing on Sheard's argument that epideictic occasions in our culture give occasion for re-examining and sometimes "shuffling" values, I'll argue that the fiftieth anniversary provided a uniquely powerful opportunity for this re-examination, and that the range and depth of the critique of "the disparity between existing and desired conditions" laid the groundwork for an ongoing, active discourse on how to achieve those desired conditions. I'll argue that the significance of this anniversary sparked the kind of "vibrant public realm" that Gerald Hauser claimed epideictic could produce and that the state of Presumption held by *Brown* provides the particular view of morality that governs the whole of the discourse. The anniversary offered an opportunity to consider the ideals, values and goals of *Brown* as social conditions to be resolved through public debate without the intervention of the formal legal structure.

In Chapter 5, I conclude this analysis of the *Brown* anniversary events with an examination of agency. I'll argue that the creation of the Brown v Board of Education National Historic Site and the many tributes offered by national leaders were necessary in part because state institutional actors, such as the Supreme Court, lack the agency to bring about the change in "folkways" needed to resolve social problems. Thus, by amplifying and reinforcing the values and ideals in the decision and presenting it to the audience with the presumption of communal agreement, state leaders worked to produce, through epideictic means, the mental assent that would lead to individual actions and decisions to bring society more closely in line with *Brown's* promises. I then move to connect this case study to earlier work by John Lucaites, Clarke Rountree, and others on the importance of studying judicial rhetoric as a topic of inquiry. Jesse Jackson called on his congregation in

Topeka to participate in the democratic process by voting, yet citizens who believe law and governmental processes are somehow complex or mysterious or otherwise inaccessible have difficulty participating in them. Similarly, public discourse on difficult topics such as racial justice or educational equality often suffers from a lack of shared vocabulary with which to engage the topic, and thus it becomes easier to leave the issues to the courts. As Hauser argues, “before citizens can imagine the possibility of a vibrant public realm, they require a vocabulary capable of expressing public issues and experiences of publicness, which are civic needs...that epideictic addresses” (6). Understanding the persuasive value of epideictic, and the ways in which epideictic events shape communal values that lead to deliberative and forensic rhetorical practices is one way of making the specialized language of law and the impact of legal decisions more accessible to both the students we educate and the society to which Lucaites argued we owe a “particular responsibility”.

Chapter Two:

A Landmark for the Landmark Case:

The Brown v Board of Education National Historic Site

As others have previously demonstrated, the *Brown v Board of Education of Topeka* decision offers many layers for rhetorical study, whether as a sustained prospective argument (Rountree), a necessary but not sufficient condition for achieving racial equality (Gill), an example of successful style adaptation by a skilled rhetor (Diamondstone), or a model of social protest (Hunsaker). This landmark decision came about as the result of a series of carefully selected cases with equally carefully prepared arguments and a lengthy process of lower court battles, all building prospectively toward the final argument before the Supreme Court. These efforts were aided by a changing political climate and post-World War II national interests. Like its namesake, the Brown v. Board of Education National Historic Site also benefitted from the confluence of individual efforts and governmental interests for which the project was well suited. And while The Reverend Jesse L. Jackson claimed that “only God could have chosen Topeka,” for the site, the reality is more earthbound and rhetorically situated (Anderson and Carpenter). The creation of the site emerged from the efforts of a small group of committed citizens working with the available means of persuasion to generate interest in and funding for the project.

This analysis of the Brown v. Board of Education National Historic Site begins with the seemingly obvious point that it exists. This particular project became not only a National Historic Site but also a National Park when many other proposed memorials are routinely set aside. Greg Dickinson, Carol Blair, and Brian Ott point out that “the files of government agencies bulge with plans for museums, memorials, and historic preservation

programs proposed but never constructed” (27-8). Kendall Phillips observes that public memory spaces tend to be “partial, partisan, and thus frequently contested,” which helps explain why comparatively few of such proposed sites get the funding or sanction to become realized (9). So the existence of this site isn’t to be taken for granted, despite the notoriety of the Supreme Court decision for which it is named. This recognition presents one of two paths for studying the rhetorical aspects of this site, the rhetorical efforts to establish and fund it. The second path concerns the functions of the site itself: the rhetorical framing of the decision for the public that reflects the interests of its sponsors, an argument for how the *Brown* decision should, and arguably will, be remembered, and a situated place that works to construct a particular sense of community in its visitors.

This chapter will travel both of these paths to show how the Brown v. Board of Education National Historic Site functions to reconstruct the decision for which it is named from a divisive and controversial legal decision to a national social good. By presenting the case with emphasis on the individuals involved, the lawyers, the plaintiffs, the families that made up each of the cases, and by building the history leading up to the decision as well as recounting significant moments of the struggle to implement that decision, the site constructs the case as part of the national narrative of perseverance – not just the cold logic of legal argument, but the appeal of individual experience, suffering and triumph. The darker images from the civil rights era, cast as they are within this construction of perseverance and the overall educative function of the site become more palatable, more of a reminder to current and future generations of a past not to be repeated.

This humanizing—personalizing—of the decision and its process serves to create a community around it, a community of everyday citizens and not just those with a particular

grievance or those with the legal training to share the emotion and experience of the process of the decision and its legacy. It invites visitors to discuss, to reflect, and to deliberate the future, because the items preserved and presented provide a common foundation, while the absence of other elements, such as the opposing attorneys, directs the focus of those deliberations. I will argue, therefore, that the site also memorializes, explicates, and in some ways perpetuates the ongoing dialectic of potential and realized achievement in the areas of educational equality and racial equality. I begin with an overview of public memory studies and the connections to rhetoric, followed by a discussion of the *Brown v. Board of Education National Historic Site*. A description of the site and its interior galleries is followed by a discussion of the rhetorical efforts to bring the site into being and a discussion of the site within the framework of public memory and rhetoric scholarship, particularly the scholarship related to memory places and the means by which these spaces work to create particular communities. Finally, I discuss the effect of this site as both a centering of the *Brown* decision and its legacy and as a means to hold that decision and its significance at the periphery of most American's lives.

In his introduction to *Framing Public Memory*, Kendall Phillips reports that while public memory studies can be found from ancient times on, the late twentieth century saw a surge in such studies on an interdisciplinary basis. Phillips cites the "increasing mistrust of 'official history'" as the catalyst for this growth spurt and explains,

this sense of "living" memory is in stark contrast to a sense of a fixed, singular history, suggesting that societies are both constituted by their memories and, in the daily interactions, rituals, and exchanges, constitute these memories. As well, this sense of memory highlights the extent to which

these constituted and constituting memories are open to contest, revision, and rejection. Thus, in a very real sense, to speak of memory in this way is to speak of a highly rhetorical process. Indeed, the study of memory is largely one of the rhetoric of memories (2).

The strong relationship Phillips claims between memory and rhetoric emphasizes the “cultural” aspect of cultural rhetoric, and provides a means to explore how a particular memory place, in this case the Brown v. Board of Education National Historic Site, is both the product of and the purveyor of rhetorical processes. The malleability of memory, the way it can be revised or rejected, for example, suggests the need for some stabilizing force to make memory, particularly public memory, trustworthy at all.

Edward Casey argues in “Public Memory in Place and Time” that this is precisely what is needed, that “public memory needs a place of enactment, a scene of instantiation” (38). Casey argues that because memory is mutable, public memory needs a location, “what the Romans called *stabilitas loci*, stability of place, in which to arise and last” and to “ground and collect social as well as collective memories” (39). Thus, many public memory studies focus on sites of memory, both their creation and their function. For this discussion, Carole Blair’s study of The Civil Rights Memorial in Birmingham, Alabama proved most useful and provided the model for the analysis that follows. Other recent sites of study include the National Jazz Museum in Harlem (Clark), the National Civil Rights Museum in Memphis (Armada), the *Monument to Joe Louis* in Detroit (Gallagher and LaWare), and the World War II Memorial on the Mall in Washington, D. C. (Biesecker). These studies appear in collection edited by Greg Dickinson, Carole Blair, and Brian L. Ott titled *Places of Public Memory: The Rhetoric of Museums and Memorials*. Dickinson, Blair, and Ott began their

collection with the assumption that “memory is rhetorical and public memory places are especially powerful rhetorically” (2). They quote the story of Simonides of Ceos from Cicero’s *De oratore*, which they call “a founding legend of the rhetorical art of memory” (1). As Simonides was able to identify the dead in a collapsed banquet hall by remembering where each person sat, so Blair, Dickinson and Ott wish to reclaim the notion of place as an organizing principle for memory, and to explore the relations between place, memory and rhetoric. They argue that understanding these relationships “is of crucial importance to understanding contemporary public culture” (1). Bradford Vivian, whose essay “A Timeless Now: Memory and Repetition” appeared in *Framing Public Memory*, further explains this relationship with an emphasis on civic spaces. He writes, “public memory scholars have long recognized the fundamental relationships among place, historical memory, and the maintenance of community. In a Western frame, communities cohere around the formation of a civic domain, and their history unfolds according to its maintenance” (Vivian 191). Even though public memory studies gained traction from academic unease with official histories, it is true that history is often constructed from the memories of those with the authority and the longevity to promote and ultimately persuade others to view past events according to their perspective.

Phillips offers two “frames” for understanding and classifying public memory studies: the memory of publics, and the publicness of memory (3). Within these frames he was able to extract some common themes from a series of interdisciplinary articles on the subject. Within the memory of publics, Phillips argued that the common theme is that “some entity that can be labeled a public exists and, further, that these entities have memories” (4). The dimensions of this frame include a series of interrelated pairs:

“remembering/forgetting; authority/resistance; responsibility/absolution” (Phillips 6).

Within the publicness of memory, the notion of memory appearing in view of others, Phillips offers the interrelated pairings of “appearance/loss, repetition/mutation, [and] hegemony/instability” (10). Dickinson, Blair and Ott identified some common assumptions that run through most of the scholarship on public memory, including Phillips’ notion that it is “partial, partisan, and thus often contested,” that “memory is activated by present concerns, issues, or anxieties,” and is “animated by affect,” that memory “narrates shared identifies,” and that it relies on “material and/or symbolic supports” (6).

Vivian’s argument that “communities cohere around the formation of a civic domain” is especially helpful in understanding the rhetorical effects of this particular public memory site, since its incarnation as such a site is owed to its role in a major civic event emerging from the central text of American civic life, the Constitution of the United States. It was this Constitutional element that led federal officials to adopt this site for its current use as a National Historic Site and National park. The decision it commemorates has frequently been identified as the most significant legal landmark case of the twentieth century, and has even been referred to as a “beloved legal and political icon” (Balkin 4). It has been referred to by civil rights scholars as “the Holy Grail of racial justice” in part because the Constitution is deemed to be “America’s civil religion” (Bell 3). But many who have studied the *Brown* decision, including rhetoric scholars, have noted the controversy that followed that decision from the moment it was announced. How, then, do we account for the virtually uncontested establishment of this national site?

Arguably, it is precisely because of the kinds of references noted here. For better or worse, the significance of the decision and its legacy merits a site where individuals can

connect to the past, to try to understand it, to provide “a specific kind of relationship between past and present that may offer a sense of sustained and sustaining communal identification. By bringing the visitor into contact with a significant past, the visitor may be led to understand the present as part of an enduring, stable tradition” (Dickinson, Blair and Ott 27). At the point of *Brown’s* fiftieth anniversary, it is hard to find anyone who argues that the country is worse off for the decision, but there are a few who believe the decision hurt some of the very people it was trying to help (see Chapter 4). Those dissenting voices are also part of this tradition, its stability grounded in changes brought about by the freedom to engage in public disagreement over laws and to participate in the discourse that brings continuing progress toward realizing the founding ideals of the nation. Public memory scholars cite Pierre Nora and his “notion of ‘lieux de memoire,’ or ‘sites of memory,’ [that] has helped demonstrate the linkage between the ability to remember and the places—conceptual and physical—where memory is lodged” (Zelizer 157). Looking back now, from the post-fiftieth-anniversary vantage point, it might seem like everyone remembers this case and the events surrounding it, that as significant as it was it would be (or is) a staple of American education and understanding of our civic history. But such was not the case when the work to establish the site began.

The online tour provided by the Brown Foundation for Educational Equity, Excellence, and Research (hereafter referred to as the online tour) is the primary source for the descriptions of the site and its interior spaces that follow. The information given in the online tour is supplemented by images and descriptions at the National Park Service website for this National Park and National Historic Site (hereafter referred to as NPS site). The NPS site is consistent with other National Park Service park online sites, replicating the

print brochure in online format with some interactive options added. The Brown v. Board of Education National Historic Site's web presence is an important addition to the physical location. It is a commonplace now for any public or commercial location to have a web site, and for many researchers, the web is an efficient tool for getting an overview of a research site and its history or current content. For younger researchers, particularly school-age children, an online encounter may be the only feasible encounter, and thus a web presence expands the site's visitor capacity and breadth. For the Brown v. Board of Education National Historic Site in particular, the ability to reach school-age children and other non-traveling researchers is consistent with and important to the Foundation's overall goals for the site to reach multiple audiences, and to bring the experience of the National Historic Site to all those to whom it belongs, whether or not they can visit in person.

The online tour is carefully constructed to provide the virtual visitor with a detailed sense of the physical site's layout, interior displays, and goals without being so detailed that the virtual visitor sees no reason to visit the physical site. Some material is hidden from view in the online tour photographs, and there are no audio clips to accompany any of the images. Additionally, the online tour site does not allow for any visitor feedback or review of any previous visitor comments. The online tour thus mediates both its subject and the site by providing useful information about both, while inviting the viewer to a more interactive and engaging encounter through a visit to the park in Topeka. My perspective on these online resources is shaped by my research into the decision and my ability to fill in some of the details that aren't completely clear in the images. My reading of the online tour might therefore be more generous than that of a visitor less familiar with the decision and its history, but also more critical in being able to see what is clearly not presented in the

images or descriptions. The description that follows represents my interpretation of the site from the online tour and NPS site information.

The Brown v. Board of Education National Historic Site is anchored by the building that was Monroe Elementary, with the surrounding grounds developed into a picturesque setting that belies its urban location. Visitors enter the building in the center, go up a small flight of stairs and through an entry hall just as students did in the building's former life. Above the large double doors that open to the galleries are the two iconic signs of the Jim Crow era: "White" and "Colored." No interpretation is offered, making it appear as if visitors must select the door that most accurately describes them. Like other aspects of the interactive exhibits, these identifying signs invite visitors to experience "what it was like," to try to feel the emotion and sense of living in this social structure. Inside the doors, visitors choose one of four main galleries to begin their visit. The galleries are set up to encourage a particular path through them, one that begins with the gallery directly across from the entry hall, called "Race and The American Creed." This is the largest of the four galleries and features a looping film of the same name. The film is linked to icons in the gallery, which light up as they are discussed in the film's narrative. From here, visitors are encouraged to, but notably not required to, proceed to the "Education and Justice" gallery across the hall.

The "Education and Justice" gallery features a timeline of segregation in the United States, along with exhibits that cover periods and important figures in that history. On the other side of the gallery are exhibits related to the five cases that eventually made up the consolidated *Brown* decision. Each part of the gallery has small videos as well as photographs, maps, and interactive features for visitors to test their knowledge of the

events discussed in the gallery. This gallery's central exhibit is its most dramatic and the most likely to put the visitor into the conditions that existed during the era around the *Brown* decision. Named the Tunnel of Courage, this exhibit surrounds the visitor with images and sounds from significant confrontations of the Civil Rights Era. At each end of the hall is a full size image of Elizabeth Eckford, one of the Little Rock Nine, as she was being pursued by an angry group of whites after trying to attend Central High School. The Tunnel of Courage comes with a warning about the harsh language and the images. Parents are advised to preview the hall prior to taking children through. In this gallery, one sees the hegemonizing force of a public memory site, as various elements such as the timelines along the wall suggest that the development of the *Brown* case followed a stable and predictable path, as if this was the only way the events could have unfolded. Visitors see the events presented but unless they bring prior research or personal memory to the site, they don't see the elements not presented, such as the arguments for the opposing lawyers (discussed below) or mementoes of protest documents such as the petition of Massive Resistance.

The first two galleries give visitors a sense of history, which prepares them for a better understanding of the third gallery on the tour, titled "The Legacy of *Brown v. Board of Education*". This gallery features exhibits that discuss the impact of the decision in terms of both the efforts to implement it and the larger civil rights era actions, important persons, and legislation that came after *Brown*. Here visitors find artifacts of those efforts in both open displays and pull-out drawers. These exhibits include items such as law enforcement night sticks, or batons, accompanied by photographs of encounters between police and civil rights protestors and images from the slavery era alongside the manacles used bind

Africans brought to America as slaves. Other displays feature copies of briefs and newspaper pages from the *Brown* era. Interactive exhibits provide information about key individuals in the civil rights struggle, as well as profiling African American writers and sampling protest music. One interactive exhibit called *The Road to Justice*, which is also featured on the National Park Service website, asks visitors to put themselves in the place of a teenager in the 1950s, making choices about what to do in the face of discriminatory educational systems. The short film *Pass It On* encourages viewers to see civil rights as an attitude, a mindset, rather than a set of laws. This film, like the others in the galleries or the interactive exhibits found there, can be experienced only in the physical site, so that the physical site visit provides a distinctly different experience than the online tour. In both places, this hall invites visitors to see the efforts to achieve racial equality as a continuing effort, one of which they are an important part. Unlike the Civil Rights Memorial in Birmingham, there is no direct conscription effort, no pledge to sign or wall on which to have one's name appear. There is, however, an invitation, an encouragement to understand the struggle as ongoing and to engage in the efforts to promote democracy, justice and equality both domestically and globally.

This encouragement is extended through the final gallery, called Expressions and Reflections, where there are paintings on the wall and a few exhibits, but mostly open space with seating to allow visitors to reflect on what they've learned during their visit. There is a magnetic board for visitors to leave messages, messages that are necessarily temporary as the letters are used and re-used by future visitors, but one that has visitors engaging in reflection and memory in the same space, if in asynchronous time. Expression Stations allow visitors to record their responses in a several mediums, from artistic to

verbal to textual. These tools of common reflection and communication are another part of the physical location's function that is absent from the online tour. Finally, the site includes a bookstore, situated at the opposite end of the building from the Expressions and Reflections gallery, making it a deliberate destination rather than the end of the directed tour.

The directional efforts of the site are not unusual, as public places have "particular paths of entry, traversal, and exit" (Dickinson, Blair, and Ott 29). The site offers visitors choices with directional indicators, with each gallery requiring a return to the main hallway, just as a school classroom returns a student to the main area of interaction with others at the end of the class period. The visitor is not limited to these choices, since no two galleries are directly connected. This continual return to the main hallway reinforces the original purpose of the site; the visitor is continually reminded that this is a school, and that education was the central focus of the *Brown* decision. The contemporary site is now many things: a National Park, a museum, a former all-black elementary school, a restored historic building, a memorial, a place of memory and remembrance, a "physical [place] where shared memory is lodged" (Zelizer 157).

With all of these artifacts representing so much activity over time, it can be difficult now to imagine any American not being familiar with the *Brown v. Board of Education* decision and its details. Yet that was exactly the case when a small group of people in Topeka, Kansas, first began the work of creating the Brown v. Board Foundation for Educational Excellence, Equity, and Research. In this town where the lead plaintiff in the famous consolidated case lived, little was being done to commemorate the thirtieth anniversary of the decision. The owner of the school that became the Brown v. Board of

Education National Historic Site didn't know it was connected to the decision. The coordinator of the granting agency that funded the site didn't know the details of the Brown cases. So what began as a desire to educate people about the decision, to ensure its continued importance to future generations, and to build on and pay tribute to the work of the attorneys and plaintiffs in the case, grew into a campaign to create a public memorial, a campaign that in turn created a kairotic moment for all of the writing and events that were produced for the fiftieth anniversary of the decision. By the time it was dedicated on May 17, 2004, the Brown v. Board of Education National Historic Site had been a fourteen year long project, one that demonstrated for its founders the success of the democratic process in American government. The campaign to establish the site also demonstrated the power of a carefully and purposefully constructed argument, an effort that parallels the decision it memorializes in many ways.

The genesis for the Brown Foundation, and in turn the Brown v. Board of Education National Historic Site, was a routine conversation between Cheryl Brown Henderson, the youngest daughter of lead plaintiff Oliver L. Brown, and a colleague, Jerry Jones, as the two of them prepared to attend a commemorative event for Dr. Martin Luther King, Jr. in January 1988. A new resident in Topeka at that time, Jones asked what was being done to commemorate the anniversary of the *Brown* decision. Henderson's response of "not much" triggered a series of conversations that led to the establishment of the Brown Foundation for Educational Excellence, Equity, and Research in October of the same year. The mission for the foundation was to "resurrect and share the *Brown* story" and to do so in a way that went beyond "commemorating dates and places" (Henderson). For Henderson and Jones, learning the degree to which the abbreviated media constructed version of *Brown* had

eclipsed the complexity and the multiple individual stories that made up its history was daunting, but renewed their commitment to publishing – making public – the contributions of the individuals who made up the cases, the attorneys, the many plaintiffs beyond Oliver Brown and his daughter Linda. The mission expanded to include “using public history to heal old wounds” and to change the perception of *Brown* within the city of Topeka, and ultimately the others cities represented in the decision (Henderson). Henderson explains that Topeka, “like other cities that have a historic legacy of national significance,” preferred to bury “this aspect of its past,” with many Topekans believing that the decision cast Topeka in a negative light because of the history of racial strife that followed it. The Foundation, then, had multiple rhetorical goals, most of them focused on reconstructing the image of *Brown* and reversing decades of mis-information about it.

The pursuit of these goals shifted when the former Monroe Elementary School became available for sale in 1990. Monroe was the school Oliver Brown’s children attended, one of four all-black elementary schools in Topeka in the early 1950s. Henderson, Jones, and a group of community volunteers began a letter writing campaign² in an attempt to find a wealthy patron who could buy the property and sell it to the foundation with payments over time. This campaign was not successful, indicating that the national significance of the *Brown* decision was not yet established at the time of the campaign, and that the interests of the Brown Foundation’s founders were more local and personal than representative of larger interests. It also suggests that the letters lacked the persuasive force that more personal contact might have afforded. What is significant is that the

² When consulted for this project, Cheryl Brown Henderson advised that the records pertaining to the letter writing campaign have been archived, and therefore were not readily available. Analysis of these letters will be the subject of future research.

volunteers didn't give up. A second letter-writing campaign, this time to Congressional representatives and other federal government agencies, ensued. These arguments focused on the civic function of the *Brown* decision and the potential of a national memorial site. Letters to the U.S. Department of the Interior, the National Park Service, and Congress, argued that "interpreting the *Brown* story was in the interest of the American people regardless of race, gender, or ethnicity" (Henderson).

But as noted above, public memorial selection is highly partial, and given the divisive history of the *Brown* decision, there was reason to doubt that these efforts would be successful. As David Jacobson argues, "because such symbols and monuments arrange 'place,' locating and orienting peoples spatially and temporally, and are critical in binding and mediating the body politic...they determine who 'belongs' to the nation and on what terms" (qtd in Blair, Dickinson, and Ott 28). In the original decision, the Kansas case played a unique role in that it was the only one of the five districts involved that could claim its separated facilities were substantially equal³. This case gave the 1953 Court the keystone for its finding that separate cannot be equal, despite the quality of the facilities involved. Kansas was also a "border" state, one not located in the former Confederacy, a factor important to both the Court and the attorneys building the case. For the site, these distinctions also meant that the location might be more warmly embraced by a national audience than would its location in one of the other original cities.

Barbara Biesecker has argued that some projects sail through even the toughest approval hurdles because they memorialize events that are "central to our history, central

³ Determination of equality in segregated schools was based on such characteristics as facilities, curriculum, teacher training, per-pupil expenditures, length of school year, transportation, and quality of teaching materials. See Wilson (92-93),

to our view of our role in the world, central to our values” and that they function, or are intended to function, to unify a divided civic populous (215-216). By the time the Monroe School became available, the *Brown* decision had been tested in the Supreme Court many times, but still reigned as arguably its most significant decision of the twentieth century. Establishing the historical site in Kansas, in the heartland of America, served to place the *Brown* decision at the heart of America, to make it, or at least attempt to make it, belong to every American, just as the Brown Foundation campaign had argued. The site provides the means for sharing the legacy of the decision in the company of others from other places around the country, of remembering the decision and all of its complexity together in public, to construct a public of all, to insist that to be American is to claim a share in the remembering of the *Brown* decision, its actors, and its legacy.

The timing of the Brown Foundation letter-writing campaign was fortuitous. In 1985, former Chief Justice Warren Burger had called for a survey of properties associated with the Constitution, with an eye to preserving these sites under the National Park Service. The survey was published in 1987, in honor of the 200th anniversary of the Constitution. Dr. Harry Butowsky led the survey project. He consulted constitutional scholars and federal judges, and *Brown v. Board of Education* was a case consistently appearing in the recommendations. A search of related properties was undertaken, but the Monroe school was not among them. This was in part because the property owner was unaware of its relationship to the *Brown* case. When the property owner put the school up for auction, the Brown Foundation acted. Through its letter writing campaign to Congressional Representatives, the Foundation was put in contact with the Afro-American Institute for Historic Preservation and Community Development in Washington, D.C. At the

same time, Dr. Bukowsky was contacted with the suggestion that he re-open his survey and consider the Monroe School. Bukowsky had been unaware of the details of the *Brown* decision or the individuals and places involved. His new awareness of the site and his decision to consider it led to the property being designated for preservation as a National Historic Landmark.

This was not the end of the persuasive effort for the Brown Foundation volunteers. Accomplishing the restoration and site construction required more than just the Park Service being on board. The Foundation members organized a community for “brainstorming, letter writing, and moral support” making contact with individuals and organizations at every level of society, from the *Brown* plaintiffs to the city leadership, from civic and social clubs to fraternities and sororities, from local preservation societies to the state legislature (“Preservation”). In addition, the Brown Foundation members were working to generate federal legislation that would designate the site as a National Historic Site, a designation that had already been given to the Sumner school, the formerly all-white school where Oliver Brown had tried to enroll his daughter, and whose rejection of that enrollment application set the stage for the Topeka case. The effort expended to raise support for the site and begin the work of renovating and reconstructing it as public memorial site was an enactment of the Brown Foundation’s goal not only to educate the public about the complexities and details of the *Brown* decision, but also to create a site that could belong to a wide variety of publics.

The “public” constituted by Cheryl Brown Henderson and her colleagues rejected the kind of reductive history of the decision they were finding in the media. But they were not a sufficient public in themselves to authorize the complex view they wished to present;

they lacked the capacity on their own. Their attempts to draw in wealthy individual citizens to assist with the purchase of the Monroe School did not succeed, indicating that their interests were insufficient to cultivate those individuals into their understanding of the importance or significance of the site. Only when representatives of the federal government got involved did the process of authorizing the site and its incarnation of the decision through its selected exhibits gather sufficient authority to move. With that authority came the “horizon within which publics emerge[d] and constitute[d] themselves,” a community of those who wanted their memories, their experiences, presented and preserved (Phillips 4).

What is significant about the success of this effort for Henderson is that it demonstrated that “our system of government works exactly as intended, we have only to insist that it respond.” From a rhetorical standpoint, the efforts expended to create the site demonstrate the value of pursuing a clearly defined purpose with a focused argument. The Brown Foundation was established two years prior to the availability of the school property. Because their mission, “to keep the tenets and ideals of *Brown* relevant for future generations,” was clear, and their vision refined and expanded through a series of conversations, they were able to respond to the opportunity the site availability presented (*Brown Foundation*). Looking to the national significance of the decision and the site widened the audience for establishing and promoting the site. Establishing connections and cultivating support through community organizing, letter writing and participation in federal hearing and other due diligence processes employed a wide range of persuasive means to accomplish the goal of creating the site that would locate and enhance the Foundation’s goals.

Warren Burger's proposal to give national recognition to sites associated with the Constitution, to make Constitutional memorial places, reflects Edward Casey's claim that "public memory needs a place of enactment" (38). But Burger's proposal in itself could only provide for a place, and not the particular memories that would be instantiated there. Casey's work is helpful in understanding some of the distinctions that inform such choices. He distinguishes "social memory" from "collective memory," where "social memory" is "the memory held in common by those who are affiliated by kinship...people *already* related to each other" (Casey 21). So, for example, the Brown sisters and their colleagues, family, friends, co-plaintiffs, have social memory. Each group related to each of the separate cases has social memory as well and each of these is different. "Collective memory" occurs when different persons not known to each other recall the same event. Collective memory is *distributed* over a given population (Casey 23). Each contributes (along with individual memory) to public memory. Examples of collective memory triggers, or "flashbulb memories," are typically based on tragedy or disaster, moments when virtually everyone can remember where they were and how they felt when they learned of the event, such as the assassination of John F. Kennedy, the *Challenger* explosion, or the attacks on 9/11. The *Brown* decision was this type of trigger, for some a moment of celebration and for others a disaster of epic proportion (see, as one example, the Southern Manifesto issued shortly after *Brown II* was announced). And yet, like other collective memory triggers, the initial public response faded, and the decision, while remembered and acted on in various places at varying degrees of speed and while studied by attorneys and providing precedent for legal decisions, faded to the periphery of public attention. For most visitors to the Brown v. Board of Education National Historic Site, the *Brown* decision predates personal memory,

and is more likely an event learned from a history or social studies class in school, precisely the truncated versions of the story Henderson and her colleagues were determined to unpack. And because the site is dedicated to a Supreme Court decision, one need not be thinking of the individuals involved in the cases to be engaged in the commemoration.

The Brown v. Board of Education National Historic Site offers both aspects of public memory that Kendall Phillips argues scholars interested in public memory should attend to: the memory of publics, and the publicness of memory (3). Phillips defines “the memory of publics” as the way that memories affect and are effected by various publics. (3), and argues that it is “more than many individuals remembering the same thing. It is... a remembrance together, indeed, of remembrance together as a crucial aspect of our togetherness, our existence as a public” (4). All three dimensional pairings associated with this definition, “remembrance/ forgetting; authority/resistance; responsibility/absolution” are part of the site, with the most significant being the pairing of remembrance and forgetting (Phillips 6). Barbie Zelizer and other public memory scholars built on Pierre Nora’s notion of memory being “subject to the dialectic of remembering and forgetting,” a notion which Andreas Huyssen attributed to Freud and his claim that “memory and forgetting are indissolubly linked” (Dickinson, Blair and Ott 8-9). In attempting to remember the decision and the individual actors comprising it, the site deflects other memories of individuals who were on the other side of each decision. In the process of remembering the attorneys who fought for the plaintiffs, the site virtually erases those who argued for the laws as they existed. Men such as John W. Davis, a highly respected attorney who had argued and won numerous cases before the Supreme Court, defending what he called “a way of life;” or Paul Wilson, the young attorney from Kansas who was sent to

argue that state's law before the Court; men who claimed then and after that they were defending the law and with it the existing legal structure by arguing against *Brown*, are not celebrated in this tribute to law and the legal process. While attempting to remind the visitors "what it was like" in the *Brown* era in its most notorious incidents, the site diminishes memories of places such as Baltimore, Louisville or St. Louis where segregation ended peacefully (Kluger 720). While insisting on *Brown's* significance, the site glosses over the erosion of *Brown's* principles in later Court cases, including the Michigan Affirmative Action cases decided just the year before its opening. The elements have not disappeared from the public discourse on education and racial equality, a conversation discussed in more detail in Chapter 4.

Phillips' second aspect of public memory, "the publicness of memory" is defined as memories that have been visible to many, that have appeared in view of others (Phillips 6). Phillips notes, however, that this is not a "mutually exclusive" concept, "since the memory of a public would necessarily manifest itself publicly" (6). As a National Park, the Site belongs to all Americans, it is a public place where the public is invited to remember together, to bring whatever remembrances each visitor has of the events displayed and recounted in the galleries and to leave some of those behind, contributing to the shared remembrance for future visitors. In this sense, the site fosters memory that occurs "out in the open...where discussion with others is possible" (Casey 25). In addition, the site functions to house the remembrance of diverse collectives, to display memory in public, and to shape and stabilize the memories associated with the *Brown* decision. But as with most public memory sites, what is manifest is highly deliberate, a reflection of the views and values of the sponsoring entity, so that while visitors are encouraged to share and

create memories of and about the *Brown* decision and its surrounding culture, the site houses the “official memory,” and that memory defines the terms of the *agon* – the limits of the discourse (Casey 31). It functions, then, in the way that public memory “embraces events, people, objects, and places that it deems worthy of preservation, based on some kind of emotional attachment” (Dickinson, Blair, and Ott 7). In this sense, it also functions epideictically, presenting honorable deeds and noble qualities of historical figures, displaying “lives of important public individuals and ... consequential events that provide building blocks for the community’s story” (Hauser 15). At the same time, it presents shameful deeds, ignoble actions and figures, performing praise and blame in the same space, each aspect enhanced by direct comparison to the other.

These building blocks function similarly to those in several late-twentieth century speeches analyzed by Cynthia Sheard in her work on epideictic’s multi-layered public value. Referring to Mario Cuomo’s nomination speech for Bill Clinton, Clinton’s inaugural address, and Maya Angelou’s inaugural poem, “On The Pulse of the Morning,” Sheard claimed that these speeches drew upon “praise and blame *topoi* for their exigencies,” and that these “discourses urge[d] change in the world by first urging on listeners a particular way of seeing that can illuminate and justify change and then appeal[ed] to a set of positive values assumed to be held in common [to] guide such change” (781). The *Brown v. Board of Education National Historic site* functions in a similar way, by presenting the actions of many individuals who strove for the nation’s commonly agreed values: equality, justice, and freedom. To be American is to embrace these values, and therefore to be American means to embrace the actions of those who fought the *Brown* fight in the name of those values. The representations in the galleries of how life was in the *Brown* era present for the

contemporary visitor sights and sounds that both “illuminate and justify change.” The challenge then, is to connect that sense of need for change to a common discourse of what that change should look like, and therein lies the space of the unfulfilled promise that emerges in most public reflection on the *Brown* decision.

Sheard’s argument, however, extends beyond epideictic rhetoric presenting a “way of seeing.” She claims that such discourse “alters the reality in which it participates by making its vision a reality for its audience and instilling a belief that the power for realizing the vision lies with them” (781). This is clearly one of the goals of the site’s founders in The Brown Foundation, just as it is for the Foundation itself. The Foundation’s website explains that the goal was to be more than a “commemorative organization,” to be also “a crucible for public discourse around the ongoing impact and significance of *Brown v. Board of Education*” (“About”). This goal predated the opportunity to create the memorial site by several years. The Foundation’s earlier efforts, which are ongoing, include scholarships, conferences and educational programs on equal education opportunity, civic engagement and diversity, all designed to fulfill the Foundation’s goal to “continue the quest for educational equity began by the *Brown* decision” (Henderson). Once the site was established, it became an extension of those efforts. By telling the story of the decision, by giving it depth and individual faces and names, the site brings its visitors into that reality, if only briefly, and provides them a space to consider how to take that lesson back with them to their home locations and work to fulfill the goals that the *Brown* decision represents. It invites them into that public discourse. Thus, it “brings together the interests of individual and communities” through a “rhetoric of opportunity and possibility that invites critical thinking and participates in the kind of ‘rhetoric of pluralism’ which Miller envisions as

capable of building a ‘community’ in the post-modern era” (Sheard 790). Because the site is grounded in education, because education is central to the *Brown* decision’s reasoning for striking down segregation, and because education continues to be a locally governed element of society, the visitor is encouraged to think of positive possibilities for involvement and change.

In *The New Rhetoric*, Chaim Perelman and Lucy Olbrechts-Tyteca likened epideictic discourse to educational discourse, arguing that both worked to “creat[e]...a certain disposition in those who hear it,” a “disposition toward action” that comes about through “increasing the intensity of adherence to the values held in common by the audience and the speaker” (50, 54). The site’s emphasis on the pursuit of justice through the legal system presumes the visitor’s agreement with both the end and means of that pursuit. But rather than calling for any direct action on the visitor’s part, the site’s visual and textual artifacts ask the visitor to consider how the attitudes and behaviors that led to the conditions of the *Brown* era are still enacted in contemporary society, and how the visitor might be instrumental in bringing about some aspect of change toward achieving fulfillment of *Brown*’s promise. Each visitor is encouraged to understand the struggle for civil rights for all Americans as an ongoing one in which he or she is a part.

As a Civil Rights monument, the *Brown v. Board of Education National Historic Site* is a latecomer. It functions differently from other sites that are linked to the Civil Rights Era, primarily because it is designed to function as a living tribute rather than as a commemoration to the martyrs of the Civil Rights Movement. The first such site was the Civil Rights Memorial Center in Montgomery, Alabama, sponsored by the Southern Poverty Law Association. Its central granite circular tableau pays tribute to 40 individuals who died

in civil rights movement activities between the passing of the *Brown* decision in 1954, the beginning of the era according to this and other civil rights timelines, and the death of Martin Luther King, Jr. in 1968, generally regarded as the end of that era. The Civil Rights monument in Memphis, Tennessee is also defined by its tribute to a fallen civil rights leader, being established at the Lorraine Motel where Martin Luther King, Jr. was assassinated in April 1968. In contrast to these two public memory sites, the Brown v. Board of Education National Historic Site focuses intently on education, the triumph of the legal system, and ultimately the power of sustained persuasive efforts to achieve justice in that system.

In her study of the Civil Rights Memorial, which became the Carroll C. Arnold Distinguished Lecture at the 2006 National Communication Association conference where the theme was “Creating Sites for Connection and Action,” Carole Blair invited her audience to consider all sites, all “setting[s] for an event” not just as places where communication happens, but also “as themselves communicative, and more specifically as rhetorical” (1). Of all possible sites, Blair argued that commemorative sites “are perhaps the most obviously rhetorical...destinations of historical significance and civic socialization, summoning tourists as citizen pilgrims to partake of their typically inspirational messages” (2). Blair claimed that the Civil Rights Memorial site functioned in four important ways: to “commend, confront, conscript, and commission” its visitors (2). The Brown v. Board of Education National Historic Site functions differently, but no less rhetorically. We might, argue, a la Blair, that the site educates, engages, and encourages its visitors as its galleries work to acquaint them with the details of the *Brown* cases histories, to demythologize the decision, and to promote continued effort toward realizing the promise of *Brown*. The site’s

primary goal is to pay tribute to the plaintiffs in the five consolidated cases that made up the *Brown* decision, along with the attorneys who represented them. That goal is intertwined with the goal of educating visitors who may not be aware of the complexity or the scope of the case, the struggles that followed the decision as its terms were enacted, and the lingering challenges to achieving the promise of the *Brown* decision for true equality in education and racial justice through society. By inviting its visitors not just to see but to interact with the images, sounds and artifacts of those earlier times, the site also works to create those visitors as a community with the shared values of equality and justice.

The galleries of the Brown v. Board of Education National Historic Site carry out the intentions of its sponsoring organization in terms of educating visitors about the complexity and scope of the *Brown* decision. They also demonstrate one of the common themes of public memory studies concerning collective and memory spaces: that they are partisan, partial, and often contested. This particular site is clearly partial in terms of its representation of the *Brown* decision. And yet it was not a particularly contested site, nor was it the subject of dissent or protest in terms of its portrayal of events chosen for display. The authority of its construction of these particular public memories remains virtually uncontested. This is more a function of its second sponsor, the United States Department of the Interior and the National Park Service, than it is about The Brown Foundation. The latter could create a primarily local site around a limited set of shared experiences and memories. The former provided the authority of the nation, and thus the representations within the site carry that authority as well. Phillips argues that the “notion that publics have the capacity to authorize (or reject) certain memories” carries implicitly the “sense

that publics have a responsibility to remember certain things” (5). The convergence of the interest to promote sites related to the Constitution and the more local desire to tell the story of the *Brown* decision in larger and more complex terms than had survived to that point gave the site authority for multiple publics – not only those whose primary interest is education, but also those whose interests include the Constitution or race relations in America more generally.

While the site works to construct communities from its visitors and reflects particular publics in its arrangement, the fact that it is a site fixed in a single location has an impact on who its audience can be. The site was not built just for residents of Topeka, though clearly they were in the mind of the founding planners when they began their discussion. The site was built with all Americans in mind, which gives it a tourist element and has an effect on how it functions and who it can reach. As Dickinson, Blair and Ott relate,

because it is not transportable, it necessitates a particular set of performances on the part of people who would seek to be its audience. Thus is created a unique context for understanding the past, one that is rooted in touristic practices. To a degree exceeding the products of many other memory *techne*, one’s experience of memory places may involve planning (where and when to go, making reservations), financial resources (plane fare, lodging, gas, admission fees), and time to travel (vacation or time off from work). (26)

This performative element requires a desire to see the place, to participate in the memory on display, “enthymematically prefiguring the rhetoric of the place—at the very least—as

worthy of attention, investment, and effort” (Dickinson, Blair and Ott 26). It also requires the place to prepare for its audience, one of the many benefits of having the site established as a National Park. The establishment of the site meant renovation for surrounding Topeka neighborhoods and provides an ongoing motivation for the upkeep of those surrounding areas. This in turn increases the site’s desirability as a destination.

The desirability is important, since, as noted above, the place of public memory’s enactment provides stability and grounds the memory. However, just as Casey argued for this need, he also argued that “a large part of the very power of public memory resides in its capacity to be for the most part located at the edge of our lives, hovering, ready to be invoked or revised, acted upon or merely contemplated, inspiring us or boring us: in every case, public memory is integral to what I have called ‘public presence.’” (37). While the name of *Brown* is frequently invoked and often contemplated by scholars, educators and social commentators, the lessons presented in the National Historic Site’s galleries are “out there,” in a known place, but one that is not a central part of most people’s lives or thinking. It must be visited, and even for those who feel the compulsion or interest to visit, it is peripheral to daily life. Thus, by giving the *Brown* decision and its legacy a single physical place, one centrally located in its named city and affiliated with its named family, and one designated as belonging to all Americans, the site in some ways works against the goal of keeping the decision living and having it motivate local action to promote equality in education or other parts of society. Furthermore, the creation of this fixed site, and the high and broad reception it was given, in some ways foreclosed one of the goals of its founders, which was to establish a series of sites that would tell the many stories related to *Brown* in the several regions included in that decision. It gives a sense of conclusion to the decision

and its trajectory, suggesting that, despite the contents of the galleries, *Brown* is now a truly historical event and not an ongoing engagement. This further serves to place *Brown* at the periphery of most American lives, just as Casey argued. The online tour brings the site closer by placing it in the space of a personal computer or other internet enabled device, but even the online tour requires a deliberate decision to locate and view the site and therefore at least some awareness of its existence and significance.

But if this site constructs its would be audience in a touristic mode, it also constructs the question of educational equality as a central and national concern, and it provides a common language through which these discussions can continue to take place. Casey argues that public memory is formed “through ongoing interchange of ideas and thoughts, opinions and beliefs” (30). Public memory, he continues, “is the very condition for all such interchange, which could not take place without it” (Casey 30). However peripheral the place or the idea that *Brown* has come to symbolically represent, the creation of the site and the efforts that produced it gave rise to a new public discourse about its meaning, a new body of works in both the scholarly and mass market publication realms, and scores of commemorative events, displays and films examining its legacy.

All of this has led to a new vocabulary for discussing *Brown* and the means for fulfilling its promise, an achievement that Gerald Hauser would classify as a civic need that epideictic rhetoric provides. Hauser’s work on the civic function of epideictic rhetoric built on the earlier work of Robert Bellah and others, who argued that “before citizens can imagine the possibility of a vibrant public realm, they require a vocabulary capable of expressing public issues and experiences of publicness” (6). Such epideictic efforts are, in Perelman and Olbrechts-Tyteca’s view, efforts to “establish a sense of communion” in an

audience, and thus play an important part in civic life by providing a “foundation [upon which] deliberative and legal speeches [could] rest” (51). The full civic circle contemplated in these arguments is present in the site, as social attitudes and values first created a law, then worked to overturn that law, and have subsequently been adjusting and negotiating the enactment of the values represented in that new law. The audience, the visitor to the site, is enfolded in this circle and encouraged to participate in the ongoing discussion.

Within the Brown v. Board of Education National Historic Site, it is easy to determine the deeds that are noble and good through the display of the various figures who enacted those deeds. Hauser argued that the historical actors who become societies’ heroes, role models, and teachers of good citizenship do so in “the encomiast’s gaze” and in the way “their deeds are narrated” (Hauser 15). The site makes these role models and teachers clear not for who they were, but for their deeds. Fighting within the boundaries and procedures of the legal system for racial justice is clearly noble and honorable, angrily pursuing a lone student away from an institution of public education is clearly not honorable or noble. Standing up to and continuing to fight for rights in the face of the violence and fear is noble, perpetuating the violence and fear is not. Becoming educated, writing books, pursuing a successful career in law or business or receiving awards are honorable deeds that result from the struggle to achieve equality in education, just as creating music to protest conditions of inequality or oppression is. Hauser claims “the mimetic function of the encomiast provides the moral story of the community” (16). In this historic site, we see the work of the encomiast(s), as the displays celebrate those who fought to change the system, rather than those who fought to keep it. The deeds presented are told to honor those people, and thus provide examples of what this site and its dual

authorities would have honorable citizens do and be. Hauser refers to Aristotle's construction of the individual as *zoon politikon*, one whose virtue in the community is "to know how to apply the laws and live within them" (16). In American society, those laws include the means for overturning outdated or unjust laws without resorting to the kinds of open violence and revolt present in countries where such rights are not guaranteed. It is the virtue of this system and those who navigated it in the *Brown* decision and after that this site honors most.

As the site demonstrates in its galleries, education does not stand alone and separate from the rest of a community's social fabric. The site reminds its visitors that to achieve educational equality, it is necessary to achieve racial equality on a broader scale. The site, the memory place, makes a visual argument for what was and for what is true, for how to see, experience, and feel what was and to see the *Brown* decision in light of that portrayed experience. It also draws its visitors into the civic space that is ruled by the Constitution, the "civil religion" that is continually interpreted as American society grows and changes. Cheryl Brown Henderson and her colleagues were disturbed by the way the history of the *Brown* decision had been reduced, normatized and fixed, omitting the complexities in the decision and its aftermath. The site they worked to create itself now fixes the record of *Brown* in a particular way. In so doing, it also constructs an identity for determin[ing] who 'belongs' to the nation" as they take in the presented narrative and identify with its claims (qtd. in Dickinson, Blair and Ott 28). Logically, not all visitors would accept the entirety of the argument the site makes, yet it allows for this as it encourages visitors to deliberate the future within the common language provided by its exhibits. Thus the site performs an important rhetorical function, one that is arguably epideictic in nature,

as it presents actors and acts worthy of praise to set an example of how citizens in the society it represents can be honorable and worthy citizens.

The declining recognition of the details of the *Brown* decision at the time The Brown Foundation members began their work demonstrates that no matter how significant the event, memory, and particularly public memory, is “inherently transitory,” and because of this, it is possible to “identify cultural forces employed to stabilize and unify these memories” (Phillips 9). In the case of the Brown v. Board of Education National Historic Site, it is easier to identify these forces than it is in most such places, because of the unique dual sponsorship the site enjoys. The Brown Foundation’s mark is on the site not just in the displays and arrangement, but literally in the signage. The twin forces of The Brown Foundation and The National Park Service, and the goals for each in establishing and promoting the site are the kinds of “hegemonic forces seek[ing] to craft the appearance of memories, to create in them a sense of permanency and normalcy” (Phillips 9). And while these forces do restrict or defer other interpretations of the *Brown* decision, providing the “crucible of collective remembering *and* forgetting,” they can also provide the means for presenting a tumultuous and conflicted past and “a condition of ethical and political possibility for the present and future” (Vivian 208, emphasis in the original). The site reminds us to remember the violence of the Civil Rights era not in terms of its martyrs, as other civil rights memorials do, but as a triumph for education and for progress toward the promise of racial equality.

It is important to remember that the original arguments for the site’s existence were being made in 1990, when recognition of *Brown* was sparse and truncated. The events of the fiftieth anniversary, discussed in the following chapters, are a testament to the degree

to which the argument succeeded, at least in Topeka and the federal imagination. At the same time, it is important to recognize that the founders' original idea to build similar sites in the other cities of the consolidated decision – to make a coordinated effort to tell the stories of the people in each of the places - has yet to materialize. Some of the reasons for this are also discussed in the chapters ahead. It seems clear, however, that this particular public memory site gained its existence in this particular place because of the rhetorical efforts of a committed group of citizens, who worked with both private and government authorities to achieve their goals.

Chapter Three:

Praising Athenians in Topeka

The opening of the Brown v. Board of Education National Historic Site was accompanied by a full weekend of pomp and ceremony, the very sort of events for which Aristotle claimed that epideictic rhetoric was well suited. Clarke Rountree describes the examples of epideictic given by Aristotle as those that “find their homes at festivals, at state ceremonies honoring those fallen in battle, and in pamphlets,” and the official events held in Topeka at the Site’s opening provided such a home, one that can be read as both a festival and a state ceremony honoring those who, if not fallen in battle, are clearly characterized as warriors in a long struggle (“Blameless” 296). Throughout the weekend leading up to the Monday dedication ceremony, Topeka hosted multiple events related to the *Brown* decision, including a march and an NAACP banquet. Topeka was also celebrating its sesquicentennial and organized events related to that anniversary for the same weekend as the dedication ceremony. Anticipating its many visitors, the city had been spruced up, with new sod laid and porches repaired in the neighborhoods bordering the event sites.

The National Park Service estimated the crowd at the dedication ceremony to be approximately 5000. A similarly large crowd was on hand at the Kansas statehouse earlier in the day for the proclamation ceremony. For the first time, Topeka was a stop on the campaign trail for the presidential candidates from both major political parties. One observer quipped, “everybody that’s somebody is here” (Goering). The event attracted dignitaries from political, spiritual and civil rights spheres, including President George W. Bush; two members of his cabinet; Senator John Kerry, the presumptive Democratic

nominee for president; Julian Bond of the NAACP; Rev. Fred Shuttlesworth; the better-known civil rights leader and former presidential candidate, Rev. Jesse Jackson; Supreme Court Associate Justice Steven Breyer, and many other state, local and national figures. The dedication had become part of a long celebration of America's most cherished values – equality, justice, the rule of law - and the efforts of those individuals engaged in the struggle to achieve those ideals for all Americans. President Bush had designated the theme for National Law Day as “To Win Equality by Law,” a tribute to the *Brown* decision marked by American Bar Association chapters across the country. Commemorations of the decision also happened across the country, but nowhere was there more media attention, more spectators or more collected leadership than in Topeka.

Many speeches were offered throughout the weekend, and particularly on Monday, May 17. Like many of the books and other writings prepared in anticipation of this anniversary event, most of the speeches in Topeka extolled the promise of the *Brown* decision, even as they lamented the failure to achieve or fully realize that promise, and called for renewed commitment to see that promise fulfilled. Like the panegyric speeches of ancient Greece or Rome, these speeches offered praise for the state, and like the funeral orations from that same period they praised individuals who had contributed to the decision, lamented the lack of progress toward its promise and offered consolations that the cause was not lost. While there are many similarities across all the speeches and their audiences, there are notable points of divergence that illustrate the ongoing dialectical process that has characterized *Brown* since the Court returned the implementation phase to the affected school districts in the second half of the decision.

For an epideictic performance to have a significant contribution to statecraft, the speaker needs to be of sufficient rank, station or reputation to be able to represent the state and its ideals. Nichole Loraux cites Thucydides and his description of such an orator: one “ ‘chosen by the city...who is considered not to be lacking in intellectual distinction, and who enjoys considerable esteem’ ([whose] prestige has placed him in the forefront of the political scene)” (8). The roll of speakers throughout the dedication events for the Brown v Board of Education National Historic Site fit this category to varying degrees. All were well-known by at least some part of the audience, most had national rank or prominence, and several, including the four speakers profiled here, had status that allowed them to speak with authority as a representative of “the state.”

This chapter will focus primarily on five speeches given in three locations over two days of the dedication weekend: those of Governor Kathleen Sebelius and Senator John Kerry, each speaking at the Proclamation Ceremony at the Kansas statehouse on the morning of May 17, 2004; Sebelius’s later remarks at the dedication ceremony; President George W. Bush’s remarks at the dedication ceremony; and Rev. Jesse L. Jackson’s sermon at the Mt. Carmel Baptist Church the day before. Each speech contained remarks representative of many others, and the speakers each carry the rank or reputation to speak with authority for the state or for a significant constituency within the state. Drawing on several scholars’ work on epideictic’s role in building community and increasing adherence to shared values in a community, I will argue that these speeches show that *Brown* decision has come to function in two ways: first, as a tool of statecraft, a means for presenting the good and noble America, constantly striving toward the highest ideals of equality, freedom, and justice; and second, as the dialectical framework for public discourse on the

challenging issues of constructing a just society, a framework that simultaneously allows for a common vocabulary and a difference of opinion, one that first presumes that the *Brown* decision was both right and good, and then recognizes that the solutions, the means of implementing the promises of *Brown*, are frequently contested. I will argue that the speeches given by state leaders moved beyond providing affirmation and validation for the Brown v Board of Education National Historic Site and its location in Topeka to articulating the reconstruction of the *Brown* decision, giving it the presumption of communal agreement while validating the ongoing struggle to achieve its promise. I begin with a discussion of the scholarship on the public function of epideictic rhetoric and how it relates to statecraft, followed by an overview of each speech and its audience, after which I analyze those speeches to show how the *Brown* decision functioned at the point of its fiftieth anniversary.

The relationship between epideictic rhetoric and statecraft comes in multiple forms, with the panegyric being the most obvious. In ancient Greece, these orations, according to George Kennedy, focused almost entirely on praise “of the god associated with the festival, praise of the city in which the festival is held, praise of the contest itself and of the crown awarded, and finally, praise of the king or officials in charge” (*Art* 167). The types of festivals Kennedy describes are formulaic, or ritualistic, and the audience for such an event expects the tone to be optimistic, positive, and/or celebratory, and as such they present some constraints on the speaker(s). A state festival would not, for example, be a place for recognition of the state’s shortcomings, or a place to debate the appropriate public policy for the future. Nor would it be a place to criticize the government or lament the losses caused by that state’s policies. However, the values presented in the speeches praising the

city, its gods, or its leaders would influence the audience, who might draw upon those values in future deliberative or forensic processes. This potential, according to Chaim Perelman and Lucy Olbrechts-Tyteca, is the significant feature of epideictic rhetoric. They argue that by increasing adherence to communal values, such speeches shape the potential for future action as the audience members are drawn into identification with the state and its values. The panegyric form presents the state or its leaders through praise, and so invites the audience to attain similar qualities to also be worthy of praise. But other epideictic forms, most notably the funeral oration or eulogy, can be more effective in building this sense of identification through their focus on more ordinary members of the community.

Nichole Loraux made perhaps the most extensive argument linking epideictic rhetoric and statecraft in her book *Invention of Athens: the Funeral Oration in the Classical City*. Loraux argued that the annual recitation of funeral orations for the dead created, or invented, the city-state of Athens in the minds of the Athenian audience. At the same time, these orations, “through...appeals to civic ideals, served not only to eulogize the dead but to guide the conduct of the living” (Sheard 770). Similarly, George Kennedy argued that Pericles used his famous funeral oration as an opportunity “for a magnificent presentation of Athenian ideals,” and that this speech followed a format that was already expected by his audience (*Art* 155). This format, a “threefold” structure of “praise, lament [and] consolation,” presented the noble deeds of the deceased, including ancestors of the dead, and proceeded through a general greatness of the country (*Art* 155). As these orations were repeated annually, the greatness of the country and the ideals of that country became established as part of the shared public understanding for the audience. Richard Lockwood

further argued that “the presentation of the city to itself, Athens to Athens, makes of epideictic a profoundly political or ideological discourse” (102). The funeral oration thus functioned differently than other forms of epideictic rhetoric, such as the encomium, because even though it was still intended for an audience of spectators rather than judges, it presented ideas and values which could and would influence those same spectators when they were cast into the civic role of policy or judicial deliberation.

This potential, Lockwood claims, caused Plato to criticize epideictic for its political consequences (102), a critique that appears in an almost parody form in the *Menexenus*, where Socrates claims to have been so carried away by the intensity of a funeral oration that he was in a stupor for three days. In his analysis of this dialog, Lockwood argues:

the most important effect [of epideictic] is the desire to see ourselves in the offered images, the funeral oration has the power to change our very conception of ourselves. Judicial and political rhetoric may have the power to persuade, but that power pales beside the power of epideictic to confer immortality and convert the listener into another being. The epideictic shapes our souls – structures our subjectivity – in a way that only a powerful and lengthy exercise of unforgetting, a dialectic, an analysis, a self-examination, can undo. For Socrates, the illusion of self is the real stakes of the epideictic. (127).

Some of this power comes from the formulaic nature of the funeral oration, a formula that Kennedy argues the funeral oration achieved much more quickly than other epideictic forms (*Art* 154). This formulaic structure, coupled with the religious aspects of the occasion, and further combined with the elements of praise for the decedents and their

devotion to the ideals and greatness of the state, clearly put this epideictic form into the category of ritual.

Michael Carter argues that it is when epideictic rhetoric achieves the form of ritual that it has its greatest effect, and uses the example of Socrates' funeral oration in the *Menexenus* to demonstrate this point. Carter chose ritual theory in part because it was a more developed field of scholarship and because it "reveals a power of language" that he claims rhetoric scholars at that time often ignored, an extraordinary discourse that generates a knowledge out of the ordinary and gives epideictic its role above mere display (211-212). Carter claims that, like ritual, epideictic accomplishes three things that "ordinary, pragmatic discourse" does not (212). First, it generates extraordinary knowledge, that "connects participants to the cosmos or to a more transcendent principle," or, in other words, provides an "intelligible order" to events outside of everyday existence; it "takes participants out of ordinary time," a feature that in ritual theory is described as "sacralizing time;" and "create[s] harmony among...apparent contradictions" (Carter 213-214). Secondly, it "constitutes and promotes community" (213). Finally, epideictic serves to educate the audience, to provide through its mechanisms of praise and blame and its technique of amplification (rather than the enthymeme) the models and exemplars of the way to live in the society and the actions to be taken (213, 228-229). Like Lockwood, Carter calls out Plato's concern over the moving power of such oratory, saying Plato either "misunderstood—or understood all too well—the power of epideictic speech to guide the behavior of the audience" (228). But it isn't just the audience's behavior that gives epideictic its power; it's the degree to which their minds adhere to the ideals and values presented in those speeches. This was also part of Plato's concerns.

In the *Gorgias*, Socrates expresses his concern that Gorgias, as a teacher of rhetoric, causes his students to “carry conviction to the crowd on all subjects, not by teaching them, but by persuading,” and that by such persuasion the “orator will be more convincing than the doctor” (94). The point for Socrates is that when the audience, “the crowd,” is not knowledgeable on the subject presented, the orator’s delivery will be more pleasant than the knowledgeable doctor, and the audience will therefore accept what the orator says without questioning its truth. In this way, “the crowd” can be led to believe things that are not “the best” either for them individually or for the community at large. Socrates also argues that rhetoric is only useful to those with intent of doing wrong or avoiding penalties, that “the good man, intent on the best” would not wish to avoid the consequences of his actions, including his speech, and therefore would not need the persuasive power of rhetoric. Socrates is concerned not only with what is just and unjust in the legal sense, but also in the moral sense, in the sense of an individual striving to be and do good. Thus he looks to states leaders and teachers to be knowledgeable of the good so that the good is what they impart to others in the community, and this in turn leads to a just society.

The points of community building and education are two where Carter’s work, as well as Lockwood’s and Loraux’s, intersects with that of Chaim Perelman and Lucy Olbrechts-Tyteca and their re-invigorating look at the function of epideictic rhetoric. Perelman and Olbrechts-Tyteca bemoan the devaluing of epideictic over time and argued that it “forms a central part of the art of persuasion” (49). Specifically, they argue that epideictic “strengthens the disposition toward action by increasing adherence to the values it lauds” (50). Moreover, they call attention to those values “which might not be contested when considered on their own but may nevertheless not prevail against other values that

might come into conflict with them” (51). They claim that this kind of oratory is practiced by those who “defend the traditional and accepted values” of a society, and not “the new and revolutionary,” and that such speeches tend to “appeal to a universal order, to a nature, or a god that would vouch for the unquestioned, and supposedly unquestionable, values” (52). All of these lead to a “disposition toward action” and “strengthening adherence to what is already accepted” (54). Finally, they argue that “any society prizing its own values is therefore bound to promote opportunities for epideictic speeches to be delivered at regular intervals,” and include among the exemplary occasions “ceremonies commemorating past events of national concern” that might “foster a communion of minds” (55). This communion gets a boost from the prior acceptance of the audience toward the values presented. The *Menexenus* also makes this point in its well-known claim about praising Athens to Athenians, as Socrates argues, “when one performs before the very people he is praising, it is perhaps no great thing to appear to speak well” (quoted in Carter 225). In other words, the speaker’s effort when praising Athens to Athenians is facilitated by their already accepted understanding of or predisposition toward the values being presented in the speech.

Cynthia Miecznikowski Sheard summarizes the value of epideictic over the centuries as “a rhetoric of identification and conformity whose function is to confirm and promote adherence to the commonly held values of a community with the goal of sustaining that community” (766). She further argues that this expression of commonly held ideas casts epideictic as “a vehicle through which communities can imagine and bring about change” (771). This point echoes Gerald Hauser’s claim that epideictic provides the framework for a “vibrant public realm” (6). The notion of community building also

provides the foundation for a shared sense of morality, and right behavior in both the personal and civic realms. Hauser argues that democracy requires “a trustworthy neighbor who can be relied upon to participate responsibly in resolving public issues” (6). To establish this trust, there has to be some common ground of accepted values and ideals upon which to build public policy. Like Carter, Sheard, and others, Hauser builds on the work of Perelman and Olbrechts-Tyteca to show how epideictic performs an educative function that facilitates this kind of self-governance. The individuals and actions singled out for public praise (or blame) signal to the audience what kind of actions, behaviors and deeds are honorable in that society. Deeds worthy of praise are preferred, and thus build the communal bases for making choices about those preferred deeds. Hauser argues that by witnessing an epideictic performance, “citizens experience the golden mean as it is lived in their community” which then allows them to “participate responsibly in a deliberative and forensic rhetoric whose very proofs require shared assumptions of civic norms on which enthymemes ultimately rest” (17). The golden mean, Aristotle’s term for the balance between the vices of excess and defect, provides the basis for an orderly civic life and a vibrant public sphere built on a common language of virtue. Part of this emerges from critique of existing circumstances. This critique, Sheard argues, “leads to a vision that the audience is not only invited to share, but exhorted to help actualize” (780). The audience becomes inclined to believe they can effect change as they are drawn into the message of the epideictic speech and the power of its vision expressed in language.

In the United States of America, the idea of the “state” carries multiple meanings, and to better place the speakers it is helpful to articulate the two that are at the center of the tension of the original *Brown* decision. First, the state is the nation as a whole, the

federal “state” or the singular body of all fifty states and the commonwealths that comprise the republic. “The state” also refers to the subdivisions within the larger republic, like Kansas, each of which has its own governing structure. Under the Constitution of the United States, each individual state is a sovereign body with authority to govern itself within the larger framework of federal authority. The delineation of these powers is beyond the scope of this project, but is worth mentioning because the question of state authority is so central to the *Brown* decision, its history and its legacy.

On the day of the Brown v Board of Education National Historic Site dedication ceremony, Kansas Governor Katherine Sebelius’s embodied the state within the state dynamic, offering two very different speeches in two different ceremonies, one a state function where she issued a proclamation in honor of the 50th anniversary of the Brown decision, and one as the representative of the host state at the dedication ceremony for the National Historic Site. On the steps of the Kansas Statehouse, with the columned building creating a suitable backdrop for the history and tradition being marked, Sebelius focused her remarks on Kansas and its contribution to the struggle for racial equality in American history. Banners with the words “Equal,” “Education” and “Opportunity” gave a visual reminder that education was the core of the *Brown* decision, along with the belief that education could change the rest of society. The audience at the Statehouse included state employees, who had been given time off to attend the event, and individuals recruited through a phoning campaign using the state’s Democrat voting list (Moon). Sebelius, who is a Democrat, insisted that neither the time off nor the phone campaign were partisan, but the result still meant she was speaking to an audience who already shared several common values, including political party affiliation or notions of state civic pride.

As might be expected, and in keeping with the events of the weekend in Topeka, the proclamation itself “honored the nation’s civil rights leaders and the plaintiffs and attorneys” in the *Brown* case, noting that it “began with the filing of a federal lawsuit in Topeka in 1951” (Hollingsworth). But the proclamation further declared “that because the promise of the *Brown v. Board of Education* decision has yet to be realized, ‘we recommit ourselves to the principles of an equal education and opportunity for all’” (Hollingsworth). The proclamation and the two speeches Sebelius gave followed a similar pattern of praise for the decision and those who worked to achieve it, acknowledgment of shortcomings in achieving equality without any direct blame, and a call for renewed commitment to the principles represented by the *Brown* decision. Though there are variations in the examples used and the scope of her focus, the structure of each, and particularly the call for commitment in the conclusion, was similar. Each of the speeches appealed to the audience’s sense of history and tradition, and to their presumed belief in equal opportunity and the value of education in achieving success.

In her proclamation remarks, Sebelius referred to Kansas entering the Union during the Civil War as a “free state,” calling that event a “fire bell in the night” that “challenged all Americans to resolve the question of freedom once and for all.” She further claimed that “our nation took another step on its long path toward human freedom here in Kansas” in the *Brown* decision. She called the decision “a revolution in American legal thought” and said “it embodies the principles of American civil rights law.” In what would become a recurring theme throughout the day, she also observed that “our search for true equality is not complete,” and that “just as we celebrate how far we have come, we must acknowledge how far we still have to go.” She called the “principles of *Brown*” a “guide...along that path,”

and called out the role models “who made *Brown* a reality,” specifically “a caring parent, Oliver Brown, a young solicitor, Thurgood Marshall, and a new appointed Chief Justice of the Supreme Court, Earl Warren.” In the closing comments of her short address, she called on the audience, “as Kansans and as Americans” to “reflect again on the sacrifices... remember that we are the beneficiaries...and...recommit ourselves to walking that path, for it is our inheritance and, God willing, will be our legacy.” The speech followed the “praise, lament, consolation” form, carefully constructing the decision and its role models as products of Kansas efforts, and giving her state a prominent place in the history being celebrated. But it is also the most panegyric of the five, with its emphasis on praise for the state and the accomplishments it fostered.

At the dedication ceremony, Sebelius took a broader view, one that focused more specifically on the decision and its meaning. She began by inviting the audience to “Imagine.” In a medical emergency calling for immediate surgery, she asked “does it matter whether the hand that holds the scalpel is black, white, or brown?” After a few more such examples, Sebelius claimed “this was the vision of *Brown v Board of Education* – opportunity for all, regardless of the color of your skin. Opportunity for all. Through education for all.” Sebelius turned back to the language of the original *Brown* decision, noting the contemporary sound of the remarks emphasizing education as the “foundation of good citizenship” and the “most important function of state and local governments.” In a format similar to the proclamation speech, Sebelius next focused on the “gap” and focused on Kansas her examples. She noted that “even here...in the very community whose name symbolized the quest for equality...we do not yet provide all of our students with an equal opportunity for a quality education.” Doing so, she claimed, was “our obligation” and said

“it is fitting that we renew our commitment to that obligation today...in this place.”

Bringing the history of the state back into play, she named “Topeka abolitionist John Ritchie” as one of the “voices” whose call must be answered. She referred to the need for “every child in Kansas – and, indeed, across America” to have “equal access to the transforming power of education,” and concluded by noting that it was the “enduring dream of quality” that was being celebrated. The governor gave Kansas pride of place in her remarks, but she did so with recognition that this audience included national dignitaries and visitors from beyond Kansas’s borders. Her emphasis was much more on education than on overall racial equality, and her examples more specifically tied to Topeka, aligning her focus with the present audience. Echoing the words of Earl Warren in the original decision gave her remarks a transcendence through time and a direct connection to the dedication, while limiting her comments to examples from Kansas kept her within the bounds of her particular authority.

Sebelius made her proclamation speech with “the would be president” at her side, and many of those present for that ceremony carried signs in favor of Senator John F. Kerry’s candidacy (Moon). Senator Kerry focused on similar themes about racial equality in his remarks following Sebelius’s at the Proclamation Ceremony. And like Sebelius he also called for a renewed commitment. But with his position as a presidential candidate and speaking for that larger political community, Kerry began with remarks that clearly linked *Brown* to America’s greatness. He claimed the decision “forever changed our country and our lives,” that it set “forth a vision of equality that continues to inspire freedom lovers and freedom movements here in America and around the globe.” In a nod to the local nature of his audience he also remarked that “it started here in Topeka,” which “has always been a

place for making history.” Kerry hailed the *Brown* decision, saying it “summoned our country to make real the ideal of one nation and one people.” He built on that idea of unity claiming that “all of America is a better place because of *Brown*.” But while his speech supported the goals and values espoused by other speakers, Kerry was critical of his political opponent, President Bush, and his methods of addressing the inequities in education and American social and economic structure.

Kerry’s comments highlighted an important aspect of the role of law in American society. James Boyd White observes that “the law is a way of creating a rhetorical community over time,” that it

is a language in which our perceptions of the natural universe are constructed and related, in which our values and motives are defined, in which our methods of reasoning are elaborated and enacted; and it gives us our terms of reconstructing a social universe by defining roles and actors and by establishing expectations as to the propriety of speech and conduct (*Heracles* 36, 98) .

With respect to the Constitution, the foundation of civil rights and therefore civil rights law in America, Stanley Fish notes that when there are disputes over the meaning of the Constitution, the “means of settling them are political, social, and institutional, in a mix that is itself subject to modification and change” (130). Kerry looked to the Constitution’s promise of equality in his positive claims about *Brown* and its role in American society, but he looked to contemporary definitions of equality in society and contemporary values for his critiques of current conditions and political leadership. Like the calls for renewed commitment to *Brown*’s promises, Kerry was really also calling for active engagement in

defining what the Constitution and the promises of equality mean for our current society and its institutions.

Kerry noted that “we have to defend the progress that has been made, but we also have to move the cause forward” and to “renew our commitment to one America.” The next part of the speech turned from praise of the nation and focused on specific points, and here there was amplification through repetition on two key phrases, “we have more to do,” and “we have not met the promise of *Brown*.” Kerry cited several specific instances of change and positive developments toward equality, mostly in achievements by African Americans, including the first African American mayor of Topeka, James McClinton. He concluded each example with “but we have more to do.” After calling out President Truman’s integration of the military and his own observations while in military service, Kerry claimed “we’re all Americans sacrificing for the same country and praying to the same God.” Calling for a renewed “commitment to one America,” Kerry charged that there were those working against *Brown* and the civil rights gains that followed it. He did not name names, but there was a distinct tone of blame and certainly a sense of the shameful in his claim that “we should not delude ourselves that the work of *Brown* is done” when there are those who want to “roll back affirmative action, to restrict equal rights and to undermine the promise of our Constitution” (Kerry). He cited a number of specific statistics about poverty and the related lack of jobs, health care or reading skill, each preceded by the phrase “we have not met the promise of *Brown* when.”

Kerry cited Dr. King early in his speech, and the repetitive cadence of the middle section would likely have invoked Dr. King’s “I Have a Dream Speech” for the audience, bringing the whole weight of the civil rights movement and King’s calls for equality into the

message and minds hearing it. In his conclusion, Kerry called for renewed commitment, citing a poem from Langston Hughes as an example of how to “honor the legacy of *Brown*,” and returned again to the military, this time from the perspective of veterans who, having served equally, returned to “brutal inequality at home.” He connected the service of “all these patriots” to current service men and women, and linked both to the *Brown* decision, saying they “[call] us again to the America we must become.”

Service to the state, and the nobility of giving one’s life—or giving a family member’s life—in such service was a prominent feature of the famous funeral oration given by Pericles and discussed in the *Menexenus*. Here the service may not be military, and the audiences Kerry and others were addressing in Topeka were not being asked to lay down their lives to further *Brown*’s promises, but were called rather to be part of the discussion, to engage in the process of determining the kind of society “we, the people” would create to fulfill those promises. Kerry’s speech linked this participation with the same kind of nobility as military service, because it is through creating the equal and just society, one filled with the particular features he indicates we had fallen short of, that gives honor to those who do serve in the military, and allows an individual to claim a share of that honor.

Kerry’s reference to the “promise of our Constitution” rather than the more common reference to the “promise of *Brown*” accomplished two things. First, it tied the two together as interchangeable, giving a clarity to the “promise of *Brown*” that is more elusive in other references; implied certainly, but seldom directly stated. The Constitution has been called “America’s civil religion,” the text that holds the guidance, values, and ideals of this country (Bellah). However, it is also a document that is “is always an already-interpreted object,” where the interpreters are “are already situated within the enterprise, and the ways of

disputing and the versions of the Constitution produced by those ways are “enterprise-specific” (Fish 130). So while Kerry invoked the “promise of the Constitution” as the promise that those values, ideals, guaranteed rights and protections belong to all of America’s citizens, those he called out as oppositional are also acting to interpret that promise. In the undermining efforts Kerry described, the very rationale that “our Constitution is color-blind” had been used in recent Supreme Court decisions to override particular affirmative action cases in the education arena. This give and take, this differing on interpretation and application of *Brown’s* terms, constitutes the national dialectical exchange that is the subject of chapter four. In Topeka on that Sunday morning, the view that there was one good interpretation was prominent. In his remarks at a prayer breakfast for the NAACP education summit on Sunday, Jesse Jackson foreshadowed these remarks, stating that “this (current) Supreme Court would not have passed *Brown*”, and this meant that “the 1954 promise is in jeopardy” (Anderson and Carpenter). Jackson was preaching to the choir when he made his comments, but Kerry had a more diverse audience, albeit one significantly composed of his supporters. It is perhaps the friendliness of the audience that allowed Kerry’s comments to be sharper and more pointed than the remarks made in the more widely cast speeches at the dedication ceremony.

Jackson was present at both the proclamation ceremony and the dedication, but his primary contributions to the weekend’s events came in his first forum, the church. The civil rights struggle has always been linked to notions of freedom, the emancipation of slaves in the nineteenth century and the biblical exodus of the Hebrews from bondage in Egypt. Jackson, a figure both in the civil rights movement and in the political arena, was uniquely situated to unite the two arenas, and his sermon at the Mt. Carmel Church did weave both

narratives together, the spiritual quest for freedom and justice first promised by God and from which contemporary notions of natural rights emerge, along with the more political quest for action to protect the rights guaranteed by the secular religion of the Constitution. Jackson had more freedom for his rhetorical moves because of his venue; the church was not part of the state ceremonies and not subject to the same audience expectations, and Jackson was not speaking as a state official. Rather, Jackson spoke from his position as a civil rights leader, a former presidential candidate, chairman of the Rainbow Coalition, and a Baptist preacher. On this occasion, that renown filled the Mt. Carmel Church to overflowing, with an estimated crowd of 850 rather than the normal attendance of 250-300 people.

Jackson began with a claim that Brown was “the start of a new America,” and continued with praise for the city, claiming “only God could have chosen Topeka for the national historic site” (Anderson and Carpenter). In reality, divine guidance was less helpful than the efforts of Cheryl Brown Henderson and her associates, but Jackson’s modifying comment was more earthbound. The historic site, he said, was “a museum of precious memories” among “great landmarks” that “didn’t come from the big cities,” that the “heroes weren’t the rich and the powerful” (Anderson and Carpenter). Jackson cited Linda Brown and Rosa Parks as the movers of the success, and pulling that equation of common people back to his audience in Topeka, went on to say the city “is on the map, not because of the richest family in Topeka” but rather it was “Linda Brown’s name, and her father’s name, [that] will live eternally” (Anderson and Carpenter). Earlier in his sermon, Jackson claimed that “looking back [as if the civil rights days are over] requires no

courage—just memory,” an indication that the true challenge was to look forward and to act to see the promise of the decision.

Jackson is known for mixing politics and the pulpit, and on this occasion he not only made pointed comments about the Bush administration, he called on his audience to exercise their rights within the political system by voting. He called for those 17 and older who were not registered to vote to stand, and then to come down to the front of the church and fill out voter registration cards (Anderson and Carpenter) This move worked only because of the audience and the setting from which he was speaking. He invoked those who had given their lives and/or been incarcerated for their efforts to secure the right for these African-American citizens of the United States to vote, and cast the shaming eye on those who had not honored those efforts. The roll call he offered aligned the entire culture of *Brown* with the fallen, the embattled, and the imprisoned warriors of the civil rights movement. Jackson called them out as if they were living monuments in the church: “Mandela stayed in jail 27 years for this...Dr. King was killed for this. Medgar Evers was killed for this” (Anderson and Carpenter). This recitation encouraged his hearers to align themselves with these leaders they admired, to be part of a community with them, to demonstrate their adherences to the values they represented by participating in the rights and the process they had died for. He cautioned that “the struggle is not over,” that “*Brown* must not be underestimated or overcelebrated” (Anderson and Carpenter). Jackson’s remarks were not only more pointed than the others in Topeka, but they most directly tied the events related to *Brown* to a concept of struggle, war and sacrifice.

The references to those who had died or been imprisoned for the promises offered by the Constitution, especially the right to vote, to participate in the governance of the

country through the election of its decision-makers, linked the past to the future in the present, charging the auditors of Jackson's message with the responsibility to honor those who sacrificed and fought in the past by participating and making effort in the future – the effort of being directly engaged in the democratic process. In keeping with his setting, Jackson was able to make this a spiritual issue. He told those who stood in response to his call that “If you do not use the blessing that God gives you to work with, it's a sin” (Anderson and Carpenter). Here Jackson raised the plane of the dialogue beyond, or above, race relations in America to a higher authority for which the members of his audience might have more unquestioned respect.

Jackson's remarks did not resonate with everyone in his audience. The Rev. Eric Snell expressed annoyance that Jackson had “talked politics” instead of preaching, and stated that “all of us do not agree with...his opinion...his side's not always right, and in my opinion he's never right, particularly for African Americans” (Anderson and Carpenter). Video records from the days events show that Jackson was particularly targeted by protestors, though it is unclear in either Snell's comments or the signage of the protest group what specific aspects of Jackson's comments, person, or politics were troubling. Still, it is interesting to note that of the four speakers reviewed here, the media records only the protests against Jackson in a direct way. There are references to protest groups being kept away from the dedication ceremony site, but no specific references about the groups or the nature of their protests is recorded. This omission indicates the significance of this occasion as a unifying agent, and the importance to many different communities of it being presented as a good.

Jackson referred to the renovation efforts Topeka had made in a more direct way than any other speaker. After calling out “disparities in income, education, health care and incarceration between blacks and whites,” Jackson quipped “I observed porches that had been fixed up because the president’s coming to town” (Anderson and Carpenter). The city fathers would argue that the town had been fixed up not because of the president’s visit, but because of the significance of the site being dedicated and the international spotlight that shone on it. But the president was in fact coming to town, the first sitting president to do so in a decade. One editorial remarked that for President Bush it was a “no-win” situation, since he didn’t need to come to carry the Kansas vote, but he couldn’t not come without being labeled “insensitive to [black voters]” (“Welcome”). So his visit added clout to the dedication ceremony, bringing the figurative support of America, the state, and all that it stands for. The occasion called for the kind of state-building or state-celebrating speech that “transcends partisan actions and selfish interests” (Hauser 15), a speech that provides individuals in its audience with an understanding of what it means to live virtuously in the community, to “be virtuous” by “know[ing] the laws and liv[ing] within them,” and by having a commitment to “ethical bonds and moral rectitude” (Hauser 15-16). Though President Bush spoke for only a brief eleven minutes, his speech more than any other needed to include these elements because he spoke in his role as the head of state. Bush met both the expectations of the audience and the elements of epideictic form through his offering of praise and blame, and recounting deeds and actions of the past to those in the present with a view toward the future.

As Kerry’s presence with Governor Sebelius had been significant for that audience, so President Bush’s entrance to the stage at the dedication ceremony alongside Cheryl

Brown Henderson was a visual symbol of the commitment to the efforts that make up the *Brown* decision both before and since the case was decided. Henderson spoke only to introduce the president, who in turn claimed both the stage and the event as his own in his opening greetings. Acknowledging several dignitaries in the audience, he specifically acknowledged Governor Sebelius, saying she “is with us today” and directly to her, “Governor, thank you for being here” (FDCH). One could read this as an acknowledgment of the national character of the historic site and the secondary role the state location had in that moment, or one could say that this was an acknowledgment of the political party differences that might have kept the proclamation ceremony a Democratic event and the dedication a Republican one. In either case, the president thanked only two of the 12 individuals he named, the governor and Congressman Elijah Cummings, to whom he added the phrase “proud you’re here” after thanking him for his presence.

Bush began with a direct reference to the *Brown* decision, one “that changed America for the better and forever” (FDCH). He returned frequently to the significance of the law, the courts and the litigants who had fought throughout America’s history for equality, particular in education. He made reference to the 1849 case in Boston, the first Supreme Court case involving a question of school segregation. He referred to “several cases between 1881 and 1949” that had been brought in Kansas, and noted that the “words and warnings” of those cases had “spoken across the years” (FDCH). He made particular note of Justice John Harlan’s now famous comment in his dissent in the *Plessy* case, when Harlan invoked the Constitution as having a view in which “the humblest is the peer of the most powerful,” with the law “tak[ing] no account of [man’s] surroundings, or of his color” (FDCH). It was this language from Harlan’s dissent that underscored the arguments of the

Brown cases, and reflects the ideal that the civil rights movement is tied to, the notion that the law is “color-blind” and that all Americans are entitled to equal rights, privileges and functions in the community. Bush emphasized that the justices in the *Brown* decision had based their opinion on the Constitution, where they found “no justification for the segregation and humiliation of an entire race” (FDCH). He referred to the “earnest and tenacious lawyers” who had to work to achieve Harlan’s vision, and their strategy to “bring down the whole sorry structure of segregation, case by case” (FDCH). After recounting the decision itself, Bush quickly shifted to the reality that the decision “did not end all segregation” but just as quickly turned the focus back to the honorable efforts required of virtuous citizens, continuing the effort to see the decision fully implemented, the “rising demand for justice [that] would not be denied” (FDCH). Those who worked toward this justice he called the “other heroes, cases and laws” of the civil rights movement.

The message in this part of the speech is clear: those who fought for the promises of the Constitution within the system of laws and legal procedures established by that Constitution were heroes, fighting valiantly for justice, one of America’s bedrock values. So clear was this idea that despite the controversies after *Brown* was decided, its implementation was supported by “presidential orders, and the presence of federal troops and marshals.” But in Bush’s portrayal of the heroes of this effort, the “courage of children” supersedes these official participants. Bush called out one of the so-called Little Rock Nine, Melba Patillo, who had been the first students to integrate Central High School in Little Rock, Arkansas. The Central High School situation is perhaps the best known of all the events that followed the *Brown* decision, and the images of Elizabeth Eckford, another of the Little Rock Nine whose image looms over either end of the Tunnel of Courage in the site

being dedicated, are among the most iconic of the entire civil rights era. Bush cited not only the incidents of physical abuse Ms. Patillo had endured at Central High, he also quoted her offering the motivation for standing up to these conditions. “She says,” Bush told his audience, “I went in not through the side doors, but up the front stairs, and there was a feeling of pride and hope that, yes, this is the United States; yes, there is a reason I salute the flag; and it’s going to be okay” (FDCH). Her words lent to his emphasis on *Brown* as good for America.

This was an important strategy for Bush to employ, because as the son of a white wealthy family he could not be identified with the struggles of either the African-American students or the civil rights lawyers or many, like the Freedom Riders and the lunch counter sit-in participants, who faced the daily challenges and dangers of ending segregation in the civil rights era. By giving these important words about pride and patriotism to the African-American front-line student, Bush allowed the entire African-American community to claim these sentiments as their own, thus owning and identifying with the promises of *Brown* as well as the rights and privileges of the Constitution as their own. In this way, Bush provided a means for transcending, if only for that moment, the divisions and competing interests that even he acknowledged continued to exist. Simultaneously, by appropriating the words of this African-American woman rather than sharing the platform with her, Bush kept the location of the speech at the state level, and made the individual story part of the state-crafting effect of the speech.

Bush summarized the history leading up to the *Brown* decision in a few paragraphs, including the slave ships, civil war, and Jim Crow segregation. His descriptors for these events, and particularly for those who supported them, clearly indicated the degree to

which these practices were contrary to American ideals. He referred to the “cruel and petty men” who “supervised” every aspect of African American life under Jim Crow, and the “codified cruelty, at the service of racism” that defined this culture. He recounted the everyday activities that were determined by skin color, and summarized that portion of the speech with a reference to education, the institution where “children were instructed early in the customs of racial division” (FDCH). In his clearest reference, Bush stated clearly that “segregation dulled the conscience of people who knew better. It fed the violence of people with malice in their hearts. And however it was defended, segregation could never be squared with the ideals of America” (FDCH).

Having clearly established this distinction between that history that created segregation and America’s ideals, Bush moved into the significance of the Brown decision and those who worked to create it. He referred to Charles Hamilton Houston and “young Thurgood Marshall” traveling throughout the South “in a 1929 Ford” with Marshall “typing briefs in the car” (FDCH). This portrayal honored Houston and Marshall not for their Supreme Court arguments or successes, but for the day to day efforts in the early years to push for change, going “courthouse to courthouse” as citizen-lawyers working to bring justice to those areas. Bush highlighted the research they did “document[ing] the often poor conditions” and “pursu[ing] a strategy to bring down the whole sorry structure” (FDCH). The individuals in the audience are thus invited to see themselves working for important causes in a similar way, to document a wrong and pursue a strategy to make it right.

Toward the end of his speech, Bush moved from the presentation of past events to the needs of the future and the obligations of his audience. After telling the story of Melba

Patillo, Bush reminded the audience that “it was a child that had to walk the gauntlet of slurs and jeers into a school,” and acknowledged that “America is still grateful to every child who make that walk” (FDCH). Again there is the unifying reference to America, and at the same time a gloss over a history of conflict and controversy about what should be true in how children are educated. Absent are references to the violence in Boston in responses to mandatory bussing programs, or to the Supreme Court repudiation of combining urban and suburban school districts for purposes of achieving true equality and diversity (*Milliken v. Bradley*). By presenting the aftermath of the decision in terms of the individuals who suffered for efforts to implement it, the speech served to call the audience to identify with those trying to achieve *Brown* and to dismiss any sense of identification with those who opposed any aspect of the integrative efforts. In Bush’s remarks, to think that the schools should not have been integrated, that these children should not have made that walk, was to be un-American.

Having established the right way to think about past events, Bush brought that past forward, reminding those present that “segregation is a living memory, and many still carry its scars,” and that “the habits of racism in America have not all been broken” (FDCH). Therefore, “the habits of respect must be taught to every generation,” and “laws against racial discrimination must be vigorously enforced” (FDCH). But rather than leave these needs at the level of government or other officials, Bush returned to the individuals, and concluded his speech with a combination salute to the past and call to the present. He acknowledged here, at the end, that “America has yet to reach the high calling of its own ideals,” but immediately diminished that shortcoming by invoking the *effort* and the ongoing attempts to do better as “a nation that strives to do right” (FDCH). Because the

effort and the striving are the important elements, “we honor those who expose our failures, correct our course, and make us a better people” (FDCH). Looking again at the ideals presented in the oration, rebuke and correction are to be valued. As Bush returned to the event of that day he invoked one more set of behaviors that are honorable, as “on this day, in this place, we remember with gratitude the *good souls* who *saw a great wrong*, and *stood their ground*, and *won their case*” (FDCH). To be a “good soul” as an American is to be on the lookout for social injustice and other “great wrongs,” to take up these causes and see them through to a satisfactory conclusion, but to do so in the appropriate ways, in order to “win [the] case” (FDCH).

Bush’s speech had the clearest delineation of *Brown* as symbolic of the best of American idealism and provides the most direct contrast of individuals acting honorably or not in their place as Americans. But even with their differing foci, the similarities in all the speeches concerning America and its values as reflected in this one decision are striking, almost as if that part of each speech had been scripted by the same author. In this sense, and taken as a group, the speeches in Topeka transcend the political and partisan differences between the speakers. When it comes to America, the whole, these speeches all functioned to build a sense of community around the values that *Brown* represents, whether or not those values are articulated in the particular speech. The speeches indicate that whatever divides us on the *Brown* issue, what we have in common is respect for the rule of law. They carry a common theme that *Brown* was and is good for the country. The question is no longer whether *Brown* was good law or not, or whether the arguments were sound or not, but rather how each individual and the collective “we” of each community of hearers will work to achieve the ideal represented in the decision. This works in part

because the audience already buys in to the idea that *Brown* was good, and so the speeches present amplifying examples and summative statements to increase the adherence to the values represented and future policy decision based on the presumption of *Brown* as right. The messages remind the hearers that it is up to them, or in the plural associative voice of the speakers, up to “we” and “us” to uphold the ideals of our own country, ideals that *Brown* reinscribed to us and the world.

In these speeches, the state (America) is cast as honorable and virtuous because it has *Brown*, this law that had its beginning in this place (Topeka) and here will stand the monument to the law and those who worked to achieve it. This state-crafting message appears across the Topeka speeches, appealing to the audience’s presumed shared sense of moral rightness. *Brown’s* staying power has been in its appeal to moral rightness, a pathetic appeal backed by a strong ethical appeal to being an American. The *Brown* decision is the representative figure for that which is honorable, and insofar as the whole civil rights movement is identified as beginning with *Brown*, it follows that those who put their minds and bodies into the struggle to bring about the reality of that decision are also honorable. To have physical scars from the efforts is to carry the emblems of courage. To have died in the struggle is to have become the sacrifice for which the present generation must take the actions and exercise the rights that the slain died for. To work against the tools designed to facilitate implementation of the *Brown* decision (the affirmative action programs, mentioned in Kerry’s speech, for example), is to work against American ideals. To be American requires a recommitment to seeing the promise of *Brown* fulfilled, as all of the speakers called for. The dedication speeches function to frame the acceptable discourse about *Brown*, its legacy, and the way(s) to achieve its promise. The speeches, with their

overlapping and thus amplified messages, provide the “vocabulary for expressing” the “public issue...” that *Brown* still comprises (Hauser 6). That is not to say that they shut down all discussion about what *Brown* means or how to achieve its promises. In fact, it is exactly at this point, the point of identifying solutions to the under-achievement so often noted in the anniversary discourse, that *Brown* frames a national dialogue. Although this dialogue doesn’t play out in one-to-one conversations or debates, it does have a dialectical quality as many speakers engage with the claims of others—mostly as represented in mass media—in a search for how to construct the just society with equal opportunity that is *Brown’s* promise. This dialogue will be the subject of chapter four.

However various communities discuss issues of equality in education or other social structures, the language of the *Brown* decision and a presumption of its rightness will guide the discourse. Sebelius put Kansas as the lead example, challenging Kansans to continue to uphold that leadership role in the struggle for equality and freedom, while at the same time calling on America to follow the Kansas example. Kerry’s remarks challenged policies of the Bush administration, particularly countering the “teach every child” claim in Bush’s speech by referring to money (funding for schools). The statistics he cited further amplified the focus on economic differences. Jackson called for civic engagement first, and then also critiqued the Bush administration efforts. Bush’s remarks were carefully crafted in the voice of all America, the voice of “we, the people,” that called with whole audience into identification with the nation as a whole throughout time, with no specifically identifiable target for the shortcomings or errors of history he identified. These differences point to the challenges of living up to the ideal, and serve as calls to the differing audiences to participate in ways that those separate audiences can imagine being both engaged and

successful. Each audience was a predisposition in favor of the speaker, and each speaker gave a means for effecting change that those in the audience could imagine being part of. They could, for example, participate in the voting process, as Jackson called his follower's to do. Or they could identify with the values extolled in Bush's speech, and participate in praising examples of those virtues in their own communities. They could identify areas of shortcoming identified by Senator Kerry and work to correct them as a means of service to the state. In each of these cases, the individual could demonstrate adherence to the ideas presented to them by acting.

Brown provides, as Hauser argues, the "story of lived virtue" and demonstrates "a larger commitment to ethical bonds and moral rectitude" within the structures of America that made it unique in the world at the point of its founding – democracy and the rule of law (14, 16). More significantly, the decision "inculcates a common vocabulary of excellence among its witnesses" (Hauser 19). These witnesses, who at the moment of hearing these speeches were not asked to make any decision or judgment about them, are still members of the society who will make future policy decisions respecting education and equality more generally. Jackson called out this civic function directly in his opening remarks, and so his approach was more directive. The effects of the epideictic forms, however, just as Perelman and Olbrechts-Tyteca argued, influence the minds of the hearers, shaping future thinking and decision making by them. The repetition throughout the day on the key themes of America being changed by *Brown*, being a better place because of *Brown*, that the conditions prior to *Brown* "could never be squared with the ideals of America," that our lives – all our lives – were changed, that we as a nation have achieved "remarkable advances," all service to increasing adherence in the minds of the audience to

the idea of *Brown* being a good decision, brought about from the best of individual moral effort. The stories embedded in each speech, whether tales of individual contributors to the decision or tales of departures from its vision in statistics or other measures, “provide insight into how a public sphere may serve as the crucible in which a people constitute and validate their tradition” (Hauser 18). Perelman and Olbrechts-Tyteca argue that epideictic oratory is practiced by those who “defend the traditional and accepted values” of a society, and that such speeches tend to “appeal to a universal order, to a nature, or a god that would vouch for the unquestioned, and supposedly unquestionable, values” (52). Values such as freedom, opportunity, and equality are the kinds of universal terms these scholars had in mind, and these speeches all emphasize those values.

The speeches in Topeka helped the audience to make sense of and justify the violence associated with the struggle for civil rights, both before and after the *Brown* decision. This was accomplished in several different elements, from Jackson’s admonishment to his parishioners to register to vote in honor of those who died to attain that right for them, to Bush’s salute to the courage of the children who were the front-line integrators of their schools. This is one way that the speeches combine to “connect the participants to the cosmos or to a transcendent principle” (Carter 220). The principle at work is the struggle for that most cherished of American ideals: freedom, and with it the attendant values of equality and justice. The participants in the events were connected by their participation and support of the new historic site to that struggle, they assumed the side of the victors and took on the moral authority of those being honored as they gave agreement that the struggle is not over, that the ideals have not been realized, but that the

efforts would continue and that all, each participant as well as the whole, would be better people for engaging it.

The speeches work together to build *communitas*, or community, around these universal terms. Linking *Brown* directly and repeatedly with these terms increases the audiences' acceptance of the decision as facilitating, if not accomplishing, these goals. Perelman and Olbrechts-Tyteca argue that community is built through the increased adherence to shared, or communal values. Carter argues that this comes about through the praise that is often main focus of an epideictic performance, and that this is "the anti-structure that breaks down societal divisions and defines a sense of community" (225). In Topeka, the audience in any of the formal events of the weekend were among the "Athenians" – those who already believed in the significance of *Brown* and the importance of this commemorative event. The protestors, and there were some protest groups out during these events, were kept away from the main events and were barely acknowledged by the press. The speakers, therefore, were praising *Brown* and those who worked to bring it and the entire civil rights movement about to a group of listeners who already identified with those ideas and already shared in that set of values. The Topeka speeches underscore that whatever our differing alliances, whether state residence, political party affiliation or denominational preference, we are all Americans, and the ideals and values of America unite us despite our differences. The continued reference to "America's ideals" is the binding concept that gives *Brown* its power. The link to the Constitution and the ideology of our founding, these ideals unite the entire country even though we have difference in its interpretation. But all the references to the ideals presume a language one must agree to in

order to be part of this community that the language itself builds. We all believe in freedom, equality and justice, even if we still debate openly the policies that best bring these about.

Perelman and Olbrechts-Tyteca argue that epideictic and education are linked, that epideictic rhetoric has an educative function and education is often an epideictic performance. Hauser builds on this and argues that those who become the examples of virtue “are not themselves the teachers of society” (15). Instead, it is the epideictic function that teaches by their example what noble qualities are to be pursued. This is exactly what appears in the praises offered in Topeka, for the tenacity of the lawyers, for the courage of the students, for the pursuit of justice for all citizens. The speeches validate the establishment of the Brown v Board of Education National Historic Site and National Park as fitting and proper, as a tribute to the “good souls” who fought, argued, and decided the case. Those who were the objects of this praise were simply working toward a cause, “heroes caught up in the forward press of their actions,” who did what they needed to do, and whose acts gain stature “in the storyteller’s province of how their deeds are narrated” (Hauser 15). The education function comes from telling those parts of the story that best direct the desired behavior within the community. In Topeka, the audience is educated by references to deeds of the past, but also by reminders that although the ideals are not yet achieved, it is the continued efforts, the “striv[ing] to do right” that is the most important quality.

Striving allows for difference, and the “vibrant public realm” envisioned by Hauser requires apparatus for working out differences, for open discourse on challenging and polarizing issues. In this sense, *Brown* is the grounding framework for discourse on issues of racial or educational equality. Nearly all public discourse about race and equality after

the fiftieth anniversary is framed in terms defined by *Brown*. While this did not begin with the fiftieth anniversary, the establishment of the National Historic Site began a renewed attention to and discourse about the decision and its meaning, broadening both the scope and scale of the discussion until the term *Brown* became central to those discussions. Earlier debates over the legitimacy of the decision, as Wechsler's famous argument that the decision violated the neutral principles standard for judicial propriety, are gone. The acceptable discourse now presumes *Brown's* rightness and the moral imperative of an integrated social system. Even in law, where a series of cases have tested the extent to which states can decide what is and is not equal treatment and how far equality can be reverse-engineered through affirmative action programs, no one, other than Derrick Bell, whose objection will be discussed further in the next chapter, has argued that *Brown* was wrongly decided or that it should be reversed.

What the speeches in Topeka show in their clear lines of demarcation between the better America *Brown* created and the many areas where the promise of that decision remain unfulfilled is the line of demarcation between the limits of law and the public realm. Where the state's limits are set, societal obligation begins, the ability to negotiate that obligation within the bounds of the law is one of the central points of praise in the Topeka speeches. The obligation is to determine what will and will not reflect accepted communal values in practice. This is the differential point in the ongoing dialogue about the *Brown* decision. From the declaration of *Brown II*, in May 1955, the lofty goals of the *Brown I* decision have been left up to local constituencies to enact. The history of *Brown's* enactment, or in some cases the various forms of rebellion against it, have been documented in many places, including now the Brown v Board of Education National

Historic Site. Even after the fiftieth anniversary, many of the conditions outlined in the various speeches exist, because *Brown* is only one of several competing narratives and, as Perelman and Olbrechts-Tyteca argue, some values “which might not be contested when considered on their own...may nevertheless not prevail against other values that might come into conflict with them” (51). The next chapter presents some of these other conflicting values and analyzes the effects of praising Athens among Peloponnesians, or commemorating *Brown* outside of Topeka.

Chapter Four:

Of Folkways and Stateways: *Brown* as Dialectic

The 50th anniversary of *Brown v Board of Education* generated an enormous body of writing, including hundreds of articles in newspapers throughout the country. Many of these articles reported on the National Law Day events in their areas, some gave histories of their local school's efforts to comply with *Brown*, many offered assessments of how the promise of *Brown* was (or was not) being fulfilled, and several focused on the new Brown v Board of Education National Historic site and the dedication events in Topeka over the weekend of May 15-17, 2004. The speeches offered at the dedication ceremonies presented *Brown* as a public good, a decision that had changed America for the better, and one that embodied the highest of American ideals. This theme can also be found in many of the articles written at that time, suggesting that by the time it had reached its fiftieth anniversary mark, the *Brown* decision was universally accepted as transformational.

Compared to the conditions outlined in many of the articles and even in some of the dedication speeches, however, this transformational quality is less clear. In fact, all of the speeches seemed to share the common acknowledgment that America had not achieved the ideals or promises of the *Brown* decision, with a range of different conditions and statistics provided in support of that claim. Public memory is, according to Kendall Phillips, mutable, and subject to contestation. But, as Chapter 2 discussed, the establishment of the Brown v Board of Education National Historic Site encountered little or no resistance once its proposal intersected with federal government interests and funding. Further, Chapter 3 showed some of the remarkable similarities in the speeches of four racially and politically different speakers at the dedication of that site. In both the site and the speeches, there is a

notable absence of the contestation one should expect from the recounting of such a publicly memorable and originally controversial event.

President Bush offered one possible reason for this, that the issues of segregation and discrimination from which *Brown* was the turning point happened long ago. Americans not old enough to have been part of the *Brown* era or the Civil Rights Movement understand the decision differently than do those who were part of these events. It's difficult in the 21st century to imagine living under Jim Crow segregation. And that leads to the danger of forgetting that these conditions were real, to dismiss contemporary concerns about recurring segregationist patterns or inequalities in society. The epideictic occasion re-invigorates discussion, and efforts like the Voices of Civil Rights project sponsored by AARP and the Library of Congress, or the Tunnel of Courage in the Brown v Board of Education National Historic Site, attempt to make those conditions more real and provocative for current discussants.

Gerald Hauser argues that epideictic rhetoric provides the means for a "vibrant public sphere," where participants can imagine democracy as more than just a possibility. The *Brown* decision has arguably impacted American social and political life more than any other Supreme Court decision. But its ongoing value may not be in its power as law or in its transformational properties. In this chapter, I'll argue that the ongoing function of the *Brown* decision, and its most significant value for its next fifty years, lies in its dialectical function, in the way it continues to provoke national thought, conversation and dialogue on issues of equality in education and racial equality more generally. I begin with a brief discussion on dialectical reasoning, starting with Plato's concerns about rhetoric and his preference for dialectical engagement, followed by discussion of Aristotle's definition and

explanation of this term, and then a clarification of how I use modify the classical notion of dialectical engagement to examine a national asynchronous conversation. In the next section, I return to the dedication speeches discussed in Chapter 3 and read them against the grain, examining what is missing from the narrative they present to show how *Brown* has been reconstructed. From there, I move on to examine the anniversary discourse around the country as expressed in newspapers and other media, away from the center of focus on Topeka and the new historical site, looking at four major themes that constitute the dialectic. Finally, I return to the contemporary scholarship on epideictic's civic and public function, as well as public memory scholarship, to argue that the ongoing function and value of the *Brown* decision is to prevent the "fatal consequences" of forgetting how things were, and to ensure that future policy deliberations continue to work toward full achievement of America's own founding ideals.

Brown emerged from a long history of attempts to achieve racial equality through legal means. The NAACP's efforts included housing, transportation, and voting rights, as well as education. Within their efforts related to education, there were competing ideas about the best strategy. Once *Brown* was decided, there was considerable public debate as different strategies were employed to implement the decision (see Cottrol, Diamond, and Ware; Jackson; Klarman; Kluger; Patterson; Tushnet; and Wasby, D'Amato and Metrailler for detailed historical accounts of the public discussions and legal cases related to desegregation following *Brown*). Those years of resistance and violence were markedly different than any contentions displayed at the anniversary, but the claims that were made, about what *Brown* did or did not accomplish, about what should or should not be true about education, and about who had the responsibility for achieving the ideals of *Brown*,

show how firmly *Brown* has become entrenched in both the American lexicon and the minds of policy makers throughout the nation.

While there was a marked tendency toward a unified message about the *Brown* decision at the anniversary, this is not to say that there was no contest over the claims of *Brown's* achievement. John Kerry's speech in Topeka provided the most specific challenges to the idea that *Brown* had truly transformed American society, but when he turned to his solution, he said "let America be America – by reaffirming the value of inclusion, equality, and diversity in our schools and across the life of our nation." It is laudable to "reaffirm the value," but that by itself can only move the individual, and perhaps the collective, toward action, or a disposition to act. By itself, it does not bring about change. It can, however, spark public discussion. Robert J. Grey, Jr. then the incoming president of the American Bar Association, said public discussion of the issues involved in *Brown* was a key characteristic of the fiftieth anniversary. "We have the (Brown v. Board) decision, now 50 years later we have a second decision, basically to talk to this issue of education and diversity," he said. "We haven't solved the problem, we're still working on it, and that's part of the solution." (Bulkeley). Grey's words are indicative of the Presumption⁴ *Brown* had come to enjoy, a status made more clear in the recognition that no serious discussion on equality, justice, or race can take place in America without including *Brown*, or at least citing *Brown* as a referent. Kweisi Mfume, then president of the NAACP, found the discussion valuable as well. "We have to talk about it as a nation [because] in the absence of discussion, it gets worse," Mfume said. "If we don't deal with it, civil rights will not be civil rights as we know it, if we know it at all" (Massie).

⁴ Capitalization added to present the term as Dr. Whately did.

As has already been noted, the year leading up to the fiftieth anniversary saw the publication of several books and hundreds of magazine and newspaper articles, but this chapter will focus on just those articles published in the two weeks leading up to the anniversary and archived in the *LexisNexis Academic* database. The epideictic quality of some anniversary editorials and columns echoes themes presented in the ceremonial speeches offered in Topeka at the Brown v Board of Education National Historic Site's dedication. Epideictic rhetoric has been called the most poetic of the three branches in Aristotle's classification, and epideictic speeches often feature highly memorable phrases, cadences or narratives. This is in part why they are effective at reinforcing communal values. But it is also the reason why epideictic rhetoric has long been the subject of skepticism, if not downright criticism. Some of the earliest criticism came from Plato, who feared that without regard for truth such persuasive ability would work against the efforts toward a just society. Some of these concerns, as expressed in the *Menexenus* and the *Gorgias* dialogues, were discussed in chapter three.

Plato's particular concern about rhetoric was its ability to energize or move an audience's interest without regard for the pursuit of truth or civic order, that the "rhetorician's business is not to instruct a law court or public meeting in matters of right and wrong, but only to make them believe" (92). His preferred form of discourse was dialectic, a more philosophical approach where the interlocutors engage a series of questions and answers in an effort to arrive at truth. Aristotle further defined dialectical reasoning as reasoning "from opinions that are generally accepted" ("Topics" 143). Socrates exercises this principle by beginning his dialogues with question to which his interlocutor should agree. Epideictic speeches, though not a dialogue, also tend to present

positions with which the audience can agree, building a common ground between the speaker and the audience. The difference, of course, is that Socrates continued questioning, searching within that agreed upon topic to find its applications, the individual points of practice where the idea would either hold up or break down.

When Aristotle worked to recover rhetoric and set it as the companion of dialectic, he set epideictic apart from forensic and deliberative rhetoric and characterized it as having less value than the others in civic life. Epideictic speeches, he argues, “take up actions that are agreed upon, so that what remains is to clothe the actions with greatness and beauty” (*Rhetoric* 87). At the same time, he argues that the praise and blame cast on the subjects of such speeches provided a means for individuals to understand what constituted right living in a particular society (Hauser 15). In either case, the role of the audience was only to witness, not to deliberate or otherwise come to any decision or action. Chaim Perelman and Lucie Olbrechts-Tyteca worked to recover epideictic from this path in *The New Rhetoric*, and showed that the value of epideictic comes in large measure from its ability to build *communitas*, a sense of common values and understanding that bind an audience together and provide a foundation for future policy deliberations and decisions, and by fostering a disposition to act, to be a motivating force. Plato’s warning is not lost in their work, however. The concern over pursuit of the truth, and for the value of rhetoric being the achievement of a just society is at the foundation of their argument.

Richard Graff and Wendy Winn argue that the “idea of communion is a vital” part of the new rhetoric and that “epideictic ceremonies provide opportunities for the inculcation and periodic reaffirmation of communal values” (48). The dedication ceremony for the new Brown v Board of Education National Historic Site was clearly one such occasion, and

President Bush's speech clearly worked toward re-affirming communal values for the "we" that is America. His speech also linked the efforts of the *Brown* decision plaintiffs and the other "heroes" of the Civil Rights movement in to the idea of these values, what he called America's "own ideals." Bush claimed that we—America—"strives to do right," and the context here is that what is right goes beyond what is legal. There is a moral element at work in his speech, carried most clearly in the phrase "the good souls who saw a great wrong" and worked to change it. Graff and Winn argue that shared values can be seen as a "means to an end" in "deliberative and legal discourse," but "strengthening the adherence to shared values—the creation or strengthening of communion—is an end in itself" for epideictic discourse (51).

The pursuit of a just society and the dialogic processes that lead to the laws and other structures that create and sustain such a society emerge not only from common understanding and shared values, but also from a legal and social structure that permits the testing of ideas and the competition of one idea with another in both formal and informal forums. Many of these "conversations" in the contemporary world take place in the media, whether print media such as newspapers and magazines, or broadcast media, especially television. These conversations sometimes begin when a writer, or a speaker, presents a set of ideas or claims that others discuss. This isn't the classical form of dialectical engagement, because it doesn't follow a one-to-one question and answer format. But these writings, like the speeches in chapter three, are messages to be considered, to be debated and discussed and to be answered in other media, or even in proposed new laws. It is an asynchronous engagement that ultimately asks how "we, the people" want to construct our community, and how we wish to achieve a sense of right living within that community.

These discussions are built on historical foundations, whether recorded history, actual history, or public memory. Interpretations of what came before, or what reasoning was involved, or who thought what at a particular point in history, are frequently contested, which is why public memory scholars argue that public memory is “living” and “open to contest, revision and rejection” (Phillips 2). As a society tells its histories, and as memories are contested in the public realm, common narratives emerge and become part of the foundation upon which future actions and judgments are based. These processes are largely rhetorical, as Phillips reminds us. And ultimately it can be argued that the narrative that gets adopted for a particular event or historical process is the one that most suits the interests and needs of the society’s current members – hence the ongoing revision and rejection. The similarities in the narratives presented in Topeka and throughout the national media at the anniversary serve such a purpose.

In Topeka, four politically and racially diverse speakers who oppose one another on many other issues offered very similar descriptions of what *Brown* accomplished, and these claims passed largely without challenge or even questioning. The overall effect of the speeches, and the many articles that appeared throughout the country, was to establish that *Brown* changed America for the better, and that whatever had not been accomplished in terms of its promise was due to factors other than *Brown* itself. In at least one significant way, no one would disagree. No serious person, and certainly no reasonable public figure, would now argue that the state should be in the business of segregating citizens by race. But beyond that, the claims that America was changed for the better seem less credible when measured by the statistics and challenges presented in many of the same news articles. The speakers weren’t simply showing off or seeking public approval of their

oratorical skills, so it's clear there was a purpose. And while not a deliberate attempt to mislead the audiences, the speakers all had a vested political interest in reinforcing the emerging common narrative of *Brown* as national, common good with significant transformational qualities, a state-building function explored in the previous chapter. But this function also marginalized some of the real issues remaining in achieving *Brown's* promise. This not only shows that the meaning of *Brown* is still contested in public discourse, it reflects Plato's concerns about rhetoric, and epideictic rhetoric in general, for presenting what is pleasant rather than striving to find what is true. It also highlights some reasons a national dialectical engagement about *Brown* and the achievement of its promises, specifically with regard to education and equality, are important. Two examples from claims the speeches have in common particularly demonstrate this point: that the case and its legacy all began in Topeka; and that the decision changed America.

In the first example, President Bush, would-be president John Kerry, and Kansas governor Kathleen Sebelius all claimed that the *Brown* decision began in Topeka, and thus Topeka was the launch point for all of the civil rights efforts that followed it. This is in some ways true. *Brown* was a synthesis of all the work that came before it to achieve some measure of justice through legal means, the Kansas case did begin in Topeka, and it is for that case that the consolidated cases were named in the Supreme Court decision. But in three notable ways, this claim is not true. First, *Brown* was not the point of origin, but a culmination of a long series of efforts in many arenas. Omitting this history and the work of important figures like W.E.B. DuBois, whose Niagara Movement called for racial equality in the early 1900s, diminishes the value of those efforts. The omission also diminishes the significance of the victory by erasing the many hollow successes and even failures in

several efforts that had come before it.⁵ Secondly, the Kansas case was not the first of the school desegregation cases to reach the federal or Supreme Court. The first case to be filed, in the summer of 1951, was *Briggs v. Elliott*, the case from Clarendon, South Carolina. Similarly, Thurgood Marshall was not the plaintiff's attorney in the Kansas case. Marshall led the arguments in the case of *Briggs v. Elliott*, and subsequently led the entire consolidated case when it was argued in the Supreme Court. The consolidated decision did not end up being named for *Briggs* because it was returned to the lower court when the school district administration claimed they had a plan to equalize the schools in their district and were implementing it. In the six-month period the Supreme Court gave them before further review, the *Brown* case arrived and became the lead.

This distinction is important to the way *Brown* is both commemorated and remembered. Topeka was unique among the school districts represented in the consolidated cases in two ways. First, Kansas law permitted but did not require segregation in its schools. Second, the segregated schools in Topeka did meet the "substantially equal" test in terms of physical conditions, quality of education, and teaching staff. This latter element was crucial to the Supreme Court's ruling because it was the only avenue through which a decision could emerge that did not involve ordering compliance with the existing "equal" portion of the earlier *Plessey* case. Rhetorically, then, prominence of the Kansas case is necessary to the narrative of the moral authority exercised by the Court and heroic achievement of the plaintiffs and their attorneys.

⁵ These efforts included NAACP efforts to achieve equality in segregated schools throughout the south through lawsuits involving local school districts, efforts to achieve presidential support for an anti-lynching law, and legal efforts to undo segregation and discrimination in other arenas besides education. They also include efforts to persuade the black community to provide its own quality education and community support. See especially Klarman for discussion of these efforts.

Even if the decision were not named for the Kansas case, it could not have been the decision it is without that case, and none of the anniversary discourse could have constructed it to be so. And supposing the Court could have reached the same decision with the *Briggs* case in the lead position, it's difficult to imagine how a national monument could have been created in the town where *Briggs* began. An article published in the *Atlanta Constitution* showed that Summerton, the seat of Clarendon County, remains divided to this day on the legacy of the decision, and Stephen Phillips wrote of "a sad footnote" to the anniversary, the lingering South Carolina case of *Abbeville County School District et al v. the State of South Carolina*, a case also called "today's *Brown v. Board*," where a predominantly black school district was pleading for funds to equalize their schools to the level of their predominantly white counterparts (Phillips). Joe Elliott, grandson of the school district administrator named in the *Briggs v Elliott* case, and a former headmaster of one of the private academies that attracted white families after the *Brown* decision, had mixed feelings about the case that carries his name. Unwilling to cast his grandfather as the "cruel and petty" man President Bush referred to, he was further reluctant to classify his fellow Summerton residents as racists, saying that all of them "had to deal with the legacy they inherited" (Hamilton). Both he and Leola Parks, one of the first black students to integrate Clarendon's schools, agreed that their town remained divided. Mr. Elliott said he found it "counterproductive to demonize the defendants," showing that this was happening, at least in Summerton. He further described how people shied away from familiarity with him, even people he had known for years, because of his attachment by name to the case. Ms. Parks also shied away from the idea of celebrating *Brown* as that point. She acknowledged some transformation in the town, but said it wasn't enough yet, "so we really don't have

anything to celebrate right now” (Larrabee). Memorial sites do not emerge from this level of ambivalence.

The Briggs family had been forced to leave Summerton when several family members were fired from their jobs in retaliation for participating in the case (Irvine). So, unlike Topeka, there simply wasn't anyone to lay the groundwork and make the case for either the historic site or the commemorative actions in this community. The same may be said of the other cities involved in the decision, though in Virginia some attempts were being made to establish a memorial site for Oliver Hill in recognition of his role in the case, and the state government did issue an apology to its citizens who had their education disrupted or terminated when the state closed all its public schools for five years rather than comply with *Brown's* terms. The Hill memorial was yet unsuccessful at the time of the anniversary, and the tone of apology in Virginia is far from the kind of laudatory environment that was created in Kansas. So while the case did not actually begin in Kansas, and these claims are made to elide the details of the actual history, they are also necessary to establish and confirm the site and its importance, its presence and presumption, in the ongoing narrative of what *Brown* means to the country. They serve more in the manner Perelman and Olbrechts-Tyteca claimed, to increase the adherence in the minds of the audience to the values being presented, than as the damaging or misleading kind of persuasion Plato feared.

The third point of historical inaccuracy in the claim that “it all began” in Topeka is that *Brown* wasn't the first case to establish 14th Amendment protections for minority citizens, nor was it the first to disallow segregated schools. Two weeks before the Supreme Court ruled in *Brown*, it ruled in the case of *Hernandez v. Texas* that an all-white jury did not

constitute a jury of peers for a Mexican-American defendant. According to Ignacio Garcia, that ruling gave “a confirmation that [Latinos] were American citizens” (Bingham). The ruling, written by Chief Justice Warren, held that “systematic exclusion of Mexican-Americans from juries [was] unconstitutional under the equal protection guaranteed by the 14th Amendment, and further stated ‘the constitutional guarantee of equal protection of the laws is not directly solely against discrimination between whites and Negroes’” (Bingham). This was a significant ruling, and yet it was so eclipsed by the *Brown* decision that it is seldom discussed or remembered in national discourse. Another case, *Mendez v. Westminster School District*, was the first case in which school segregation was challenged in federal court. Like the *Hernandez* case, *Mendez* focused on Mexican-Americans, and like *Brown*, it focused on education. The ruling in that case ended so called “Mexican schools” and set the stage for more segregation law repeals in the state of California. (Jennings).

The second example of a common claim to emerge from Topeka about the decision is that it changed America, a claim echoed throughout the articles from around the country, as many leaders commented on the transformational quality of the decision. The historical factors for this claim are a bit more complex, and the distinction may be less significant here, but it still points to the ways “memories attain meaning [and] compel others to accept them” (Phillips 2). *Brown* has become so symbolic of the Civil Rights Movement and the end of segregation that the nuances of how that came about got lost. This is part of what Cheryl Brown Henderson and her colleagues wanted to change by creating The Brown Foundation. The first part of the decision, the one commemorated in 2004, changed only one thing: the legality of states requiring segregated public schools. This is demonstrated succinctly in the opening paragraph of the decision’s second part, issued May 31, 1955.

Chief Justice Warren summarized the first opinion as “declaring the fundamental principle that racial discrimination in public education is unconstitutional” and that “all provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle” (*Brown II*). The key points are that public education was the only target of this ruling, and that it is the laws that must yield to the principle it declared. Yet the claims of the speeches made it appear that *Brown* changed not only the schools, but all of American society. That claim glosses over the several Court cases that followed *Brown*, cases that cited *Brown* as precedent, and overturned segregation in nearly all public facilities.

There was also direct opposition to this claim in articles that talked about the violence and resistance that followed the ruling as school districts tried to comply with the desegregation directive. Ralph Shaffer argued that “whatever else *Brown* may have done for race relations, it must stand accountable for the fact that the opposition it engendered became a major factor in the demise of America’s public schools.” Shaffer, like some other writers, was focused on schools outside the formerly segregated South. His focus was California, but others focused on the violence in Boston and other cities that up to the *Brown* decision had not come under federal scrutiny for the racial divisions of their schools. What had been a southern problem became a national implementation in the wake of the Supreme Court’s decision. The dialectical element of this expansion is discussed further below.

The problems caused by the backlash *Brown* created are significant and ongoing. But consider the number of claims that are made in the anniversary discourse about what *Brown* did. Anthony Miles called the decision “a touchstone in the ongoing effort to define the meaning of equality in American life and citizenship.” Theodore M. Shaw, president and

director-counsel of the NAACP Legal Defense and Educational Fund Education said the decision “redefined what American values are, what our core beliefs are” and said the decision “stands as one of our shining moments and gives us something to reach for” (Frahm). Dennis Courtland Hayes, NAACP general counsel, said the decision “remains the pinnacle of jurisprudence” and claimed there was “no single case in this country that’s increased the expectations for this country and the hopes of Americans” as Brown did (quoted in Wetterich). Secretary Rod Paige said the decision “‘changed everything.’ Before Brown, the U.S. Constitution was ‘an empty promise as far as I was concerned. The American ideal did not include us. Now it does’” (Dobbs). John Avlon expressed a similar sentiment when he described “an America so completely transformed by the decision that it is easy to forget how rigid opposition to change made resolution and reconciliation seem impossible.” Secretary Colin Powell, speaking at the Wake Forest University commencement ceremony said the law “changed America for the better,” adding that if not for the decision “I wouldn’t be here; and I wouldn’t even be sitting here.” Congressman Meeks offered, “Brown is the basis of indisputable civil rights progress, ... largely because of the letter and spirit of the Brown decision, America of 2004, thank goodness, is not the America of 1954.” Meeks amplifies this observation and equates the decision to two significant value points: “Upon the momentous decision, America turned away from its own brand of apartheid, turned toward making real the promise of the Declaration of Independence that ‘all men (and women) are created equal,’ and turned out the notorious *Plessy v. Ferguson* decision.” Miles wrote, “Fifty years later, we rightly commemorate *Brown v. Board of Education* as both a heroic episode in the nation’s history and an expression of the power and possibility of the nation’s ideals.” This possibility, the sense of what

American “should” be about, also appeared in Phil Yost’s column about Earl Warren. He wrote, “... as a crystallization of what America ought to stand for, *Brown* was just about as good as “all men are created equal.” (Yost). These themes, and the sense of “should” that accompanies them, is a clear indication of the quest for moral justice along with legal justice.

The *Brown* decision, then, can be seen as having been amplified in public discourse over its first fifty years, and arguably more so in last of the last ten of those years than any before it. Regardless of the fact that it had taken many other Court rulings over many years to undo segregation laws governing other parts of society or even giving teeth to the initial *Brown* ruling, the *Brown* ruling had come to symbolize the whole effort, had become an ideograph, to use Michael Calvin McGee’s term for the one word that encapsulates the whole set of values and ideals rolled up in the decision. McGee claims the “vocabulary of ideographs” has the “capacity to dictate decision and control public belief and behavior,” to persuade through discourse, rather than state-imposed directive (427). Invoking *Brown* in a public ceremony or policy conversation is conditions the nature of discussion, brings the entire Civil Rights history and the affirmation of the Court’s ruling into that discussion. At the same time, the repetition on “the promise of *Brown*” in the anniversary discourse indicates that what is rolled up in that ideographic term has also grown, as the references extend beyond the realm of public education.

The repetition on the notion that there was a singular “promise” within the *Brown* decision suggests that defining that promise should be a fairly straightforward matter. But the many claims about the different ways that promise has not been realized show how much weight has been added on to the initial ruling. The variations on the idea of *Brown*’s

promise begin in the Topeka speeches. Governor Sebilus claimed that the promise was “equal opportunity for all through a quality education for all.” She also claimed that “equal access to the transforming power of education” equated to “equal access to the promise of America,” which is the power to become anything one wishes to be. Senator Kerry illuminated his notion of the promise with a list of the conditions that indicate it has not been realized, including

one-third of all African-American children...living in poverty....only fifty percent of African-American men in New York City have a job...twenty million black and Hispanic Americans don't have basic health insurance...a fourth-grade Hispanic student is only one third as likely to read at the same level as a fourth grade white child...in too many parts of the country our school systems are not separate but equal—but...separate and unequal.

Kerry thus defines the promise as living above the poverty level, having a job, having basic health insurance, reading at the same (appropriate) grade level regardless of race, and having equal schools. These are the points of dialectic proposition, elements within the general accepted idea that American is a just society and values equality, freedom, and opportunity that look for particular application of that general principle. For President Bush, the promise is “reach[ing] the high calling of [America's] own ideals,” and specifically to break “the habits of racism,” to provide African-Americans with “access to capital and the chance to own and build for the future,” and to make our schools “equal in opportunity and excellence.” For Rev. Jackson, the promise involved achieving true “equal protection under the law,” protection that would change his assessment that African-Americans “work harder, make less, pay more, earn less, live under stress and don't live as long” as their

white counterparts (Anderson and Carpenter). Even within these four speakers' comments, one sees the enormity of the weight placed on the shoulders of a decision that technically only removed formal state segregation from schools in segregated states. This is not to diminish the value of that one element or the value of targeting that element in the NAACP's legal efforts. Education has been understood to be the turning point for individual opportunity and well as social progress for decades, and Thurgood Marshall firmly believed that if children of different races went to school together they would grow up to live in an integrated and equal society. But even that weight on the original effort has been amplified over the years as "the promise of *Brown*" has included more and more forms of social inequity. Justice Stephen G. Breyer, who was also present in Topeka, expressed the promise as a goal "that many millions of Americans of different races, religions and points of view can come together to create one nation." Breyer claimed this was the hope that Thurgood Marshall "expressed in his argument to the court in *Brown*...a hope about the Constitution, one Constitution; about the people, one people; and about the nation; one nation." This was goal toward which he said "we have made progress" and "aspire to do more." Lynn Huntley, president of the Southern Education Foundation, looked at the promise a bit differently, saying, "the promise of *Brown v. Board* was that parents would all join together to create a first-class public system for everyone" ("Private"). She also observed that this hasn't happened.

These varying assessments show the difficulty in reaching agreement on when, or if, *Brown* will have succeeded. As William Raspberry of the *Washington Post* quipped, "you can't hope to reach consensus on an answer unless you can agree on what the question is." The question of what *Brown's* promise was is not the only question lingering the public

discourse after its first fifty years. Sheard argues that epideictic occasions in our culture give occasion for re-examining and sometimes “shuffling” values. The questions raised throughout the many published articles show both the reconsideration of past efforts and some encouragement toward thinking differently in the future. The articles shows dialectic engagement on four themes: the idea of courage, both in the plaintiffs and in the Court’s actions; the idea of integration as a necessary condition for equality in education; the idea that justice can be obtained through the courts; and the companion idea that *Brown* should be celebrated.

The theme of courage is consistent both in Topeka and the more generally across the range of published articles from the anniversary month. President Bush identified the courage of the plaintiffs and their attorneys in his speech, as well as the courage of the Supreme Court justices who made the *Brown* decision. On the first point, there is little disagreement. There is nearly universal agreement on the courage of the plaintiffs and their attorneys.⁶ But there is pointed contention over the actions of the Court. While some argued that the Court acted courageously and exercised its moral authority in a valuable and necessary way, others claimed that the Court overstepped its authority, and established a bad precedent for Court action in the future. If we imagine Socrates raising the dialectic question for this topic, it might begin with a general “what is the role of the Court?” The range of answers in the media is, of course, unguided by a single wise philosopher, but they do indicate a functioning public engagement over this element of society.

⁶ The histories of individual plaintiffs in the several cases and the many threats, challenges and hardships they faced for their participation are covered in many books, but the most detailed history to date is provided in *Simple Justice*, by Richard Kluger. Kluger updated the book with a new chapter for the fiftieth anniversary of the decision.

The distinction between those who bring the cases and those who decide them begins with this sweeping comment from Ron Walters:

Ultimately, it was not just the law which made it possible, it was courage. It was the courage of black lawyers such as Thurgood Marshall and his team of NAACP legal eagles; it was the courage of Supreme Court Justices and especially Chief Justice Earl Warren. And yes, it was the courage of white administrators and community leaders who saw the justice in the claim of blacks to the equal high equality [sic] education that had been denied them.

Anthony Miles, writing for *The Seattle Post-Intelligencer*, claimed, “Brown is an ‘American Triumph.’ Brown triumphs in part because it tells a story of right overcoming might—the story of how, through clear thinking and unflinching effort, a heroic group of lawyers and litigants helped America overcome itself.” Hin-son Phillips, the white woman mayor of Summerton at the anniversary, cited her respect for the plaintiffs, and said “others would share her respect...if they knew of their courage” (Larrabee). Bush referred to “the courage of children,” and referred to the scars carried by Melba Patillo. Her classmate, Terrence Roberts, described his first year at Central High as “horrific,” saying “I learned about fear that year” (Reed). Congressman Gregory W. Meeks cited “the courage of the African American litigants,” and Nancy Pelosi referred to “the courageous, 7-year old Linda Brown,” as if the young girl had filed the claim for herself (“Pelosi”). The emphasis on this quality clearly demonstrates the degree to which courage in the face of oppression and struggle is a deeply felt American value. Even Joe Elliott asked, “are we going to wait another 50 years to admit that these blacks, these petitioners, had courage that I can hardly imagine?” (quoted in Larrabee). No one contests the courage it took to be a part of the *Brown* cases.

When it comes to the idea of the courage of the Supreme Court and the nine justices on it, there is more discord. While some, including President Bush, argued that the Warren court acted courageously, and showed “an unusually bold assertion of the court’s moral authority,” others argued that they exceeded their authority and redefined the role of the court to “set a pattern for judicial activism that has put American law in disarray on all sorts of issues” (Henderson, Sowell). Sowell’s remarks were strongly rebutted by Peter Ivan Armstrong, III of Atlanta, who wrote, “For millions of Americans like me, whose educational opportunities expanded tremendously because of the Brown ruling, it continues to embody a concept central to our constitutional ideal” (Tokasz). For Armstrong, the Court was right to exercise that moral authority. But Michael Klarman offered a more reserved view of their courage in the matter, arguing that the Court didn’t act on segregation until they were certain the majority of the country was in favor of it, that the decision “reflected a social and political sea change at least as much as it caused one” (“Better”). Klarman further argued that the Court “declined to enforce *Brown* aggressively until the civil rights movement had made Northern whites as keen to eliminate Jim Crow as Southern whites were to preserve it” (“Better”). Erwin Chemerinsky, law professor at USC, argued more on the moral authority side, saying that “*Brown* is a symbol of the courts at their very best,” as they did “what Congress and other institutions could not or even would not do” (Gearan). Columnist George Will wrote, “the decision also encouraged the abandonment of constitutional reasoning—of constitutional law. It invested the judiciary with a prestige that begot arrogance.” Thomas Tyron agreed, in part, that the ruling provided an example of “how courts can effect sweeping, beneficial social changes by scrutinizing laws according to constitutional principles that are placed in a modern

context” and that “sometimes...the outcome of such analysis....require[s] courts to overrule the will of the majority as expressed by their elected legislators,” which is what critics mean when they employ the phrase “activist judges” in a derisive way.

A few comments raise a critical eye at the decision itself. Thomas Sowell, writing in *The Wall Street Journal*, argued that the 1954 decision “relied on emotional rhetoric and political spin...without showing how the 1896 [*Plessy*] decision was constitutionally incorrect” and that the *Brown* decision “made judicial activism the law of the land” (“Where”). In a more biting commentary, Peter McKnight of the *Vancouver Sun* [B.C.] called Bush’s comments ironic since they came on the heels of a statement from his press secretary decrying the actions of “a few activist judges” in reference to the Massachusetts Supreme Court ruling on gay marriage. He went on to criticize the Court in the *Brown* decision, saying

Bush is surely right that *Brown* precipitated profound changes in American society, and that it crossed a line in American history. But the line it crossed was the one that says judges should make decisions on the basis of the law, not their own personal values....since the law still came down on the side of the segregationists, the court abandoned the law and made its decision on the basis of psychology and sociology.

McKnight’s comments echo early criticisms of the decision, when legal scholars made similar claims about the “neutral principles” that seemed missing in the decision and the arguments questioning the validity of the evidence on which the decision was based.

No other decision has generated so much debate over the proper role of the Court, no even the famous *Marbury v. Madison* ruling that established judicial review, wherein

Chief Justice John Marshall wrote, “it is emphatically the duty of the Judicial Department to say what the law is.” The value of an independent judiciary is hard to overstate, particularly in the construction of America’s federal government system. The *Brown* decision keeps this topic lively not just among lawyers and legal scholars, but among ordinary people whose opinions and mindsets help shape the environment in which judges do their work. Erasing the controversy over the *Brown* decision and the authority of the Court in making it, as the speeches in Topeka seem to do, also forecloses public discussion of courts and how they function. The value in repeating the history and challenging the idea of the Court’s courage allows for continued vibrant debate over the proper role of the courts in the future. It also keeps alive the idea that justice can be obtained through the courts, another of the key points of dialectic engagement emerging in the anniversary discourse.

Most speakers, articles, or books presented at *Brown*’s anniversary made some form of observation of how *Brown* has not been fulfilled or realized. Many of these take-backs from claims about *Brown*’s achievement are based on conditions of inequality in schools, income disparity between racial groups, and other socio-economic factors. Yet Coretta Scott King, speaking to the AARP Life@50 meeting in Las Vegas, said the decision “energized the hopes of Americans for equality...that justice could be obtained through the courts.” Thurgood Marshall clearly believed this was the case, that once the law was in place, the rule of law and the centrality of law to our entire political and social structure would lead to the changes needed to ensure equality in every arena for all Americans. Does this mean that the reason *Brown* hasn’t resulted in that equality is because of the Court overreaching its authority? Or does it mean that the Court simply can’t be expected to solve socio-economic problems?

In their essay for the 50th anniversary commemorative events at Syracuse University, Professors Linda Carty and Paula Johnson argued, “for *Brown* to have worked in its broadest sense necessitated government policy addressing inequality in housing, employment, social welfare, health care, the legal system, and many other realms of society.” They argue that *Brown* “cannot be viewed in isolation from the other necessary measure to address inequality.” They observed that “while African Americans made some immediate gains in education as a direct result of *Brown*...we not that on closer examination many of those education gains have recently been lost.” They review conditions, similar to the points Kerry made in his speech, about economic and other inequalities and come away being “less inclined to celebrate this 50th anniversary of the decision, than to commemorate the significance of what it could still mean...” if real change, “more reality than rhetoric” came about. This perspective reflects the lessons learned from the years of attempts to implement *Brown* and to bring about the desired conditions of equality and opportunity, as well as the perspectives of their own fields of law (Johnson) and African American studies (Carty). In their analysis, the ability of the Court to provide the needed changes falls decidedly on the negative.

In Massachusetts, Justice Robert Cordy argued that the courts alone are not sufficient, that “progress in civil rights is a byproduct of the three branches of government working together.” Robert Hilldrup set the responsibility outside of government entirely, saying, “the true test of education and racial cooperation is something that society has to reach through evolution” (McKelway). Similarly, Barbara Harvey, a black teacher working in a white school, argued that “people haven’t bought into it....that’s not the schools, it’s the people” (Hackett). Derrick Bell argued that grassroots efforts were more effective,

becoming one of the only public voices to argue that *Brown* was wrongly decided. But others said “Bell is mistaken to believe that the government could have enforced equality without integration,” and more specifically that he “doesn’t understand the nature of government-sponsored education” (Gershman). Terrence Roberts also argued that the route through the courts was insufficient. He claimed, “we are a country that believes in mythology...the myth is that the issue has been settled because *Brown* versus Board of Education was passed” (Reed). This claim is similar to one Bell made in a speech at Syracuse University in 2003, where he said the problem with significant cases like *Brown* was their “mesmerizing effects,” the way they led people to believe a problem was solved because of a court ruling, which in turn caused them to cease any efforts they were making toward solving that problem. Bell believed that if the Court had ruled for equality in the segregated schools, and really enforced that provision, the states themselves would realize that it was too expensive to maintain separate systems, and the segregation factor would wither under that economic pressure. The argument for economic equality between school systems is still an active part of the national conversation on education.

This discourse shows that ongoing efforts are a key part of achieving justice, and several writers expressed concern about the lack of interest or outrage at the continuing resegregation occurring throughout America. In Atlanta, for example, the *Journal-Constitution* editors claimed that, “except for researchers, Georgians don’t seem particularly interested in the increasing resegregation of schools. Few parents of either race feel strongly enough about diversity to put their child on a bus for an hour to travel across town” (“Our”). An Austin editorial claimed “the passion, the anger and, most of all, the hope that *Brown* evoked have faded” (Alford). In Buffalo, Leslie Foschio, “encouraged

young people to ‘step up to the plate’ and reverse the mistakes of the past” precisely to avoid “lawsuit, after lawsuit, after lawsuit” (Tokasz). Leonard Pitts, Jr. wrote that “the moral of Brown, then, is that the law has limits” and that because of this “Brown is...a reminder that battles that once were waged in courtrooms are now waged in the hearts and minds of a nation that still isn’t sure it can, or even wants to, live up to its highest ideals.” Pitts’s comments evoke Bush’s words in Topeka, where he expressed with certainty that Americans do want to live up to these ideals. This difference of perspective shows the opportunity for rhetoric to function, for occasions such as the anniversary to provide the epideictic occasion and the speeches or writings that reaffirm communal values and help motivate audiences to adhere to those values. The law is an idea that works when individuals adhere to it, and sometimes the general idea of being a law-abiding citizen needs additional persuasion to conform to a particular law. The law, as Klarman observes, is not self-executing (*From* 48). Earl Pollock, the clerk who assisted Warren in drafting the opinion, stated simply “people tend to misunderstand what law can accomplish.” Responding to an interview for a documentary that “seemed premised on the idea ‘that Brown has not succeeded because there’s tremendous black poverty’”, Pollock said:

That’s a very nagging problem, but I don’t think anybody could reasonably have expected Brown was going to solve the problem of poverty, nor could anybody have reasonably believed it would solve the problem of racism,” Pollock said. “I don’t think it could be regarded as a failure of Brown that we still have those problems....Law can accomplish a lot, but it is not always the answer to every social or economic problem we have—that’s why we have legislatures

and executives and social-service agencies and philanthropy and a lot of things that have to function effectively outside the courtroom. (Richman).

These limits to what law can do have a corollary in what cannot be done until or unless law acts. A *Washington Post* editorial eloquently covered this point in its summary of *Brown's* accomplishment:

No longer do Americans have to petition the federal courts, as did the plaintiffs 50 years ago, to prevent states from denying the most basic racial equality under law. No longer does any group of people, on account of their race, have to seek from the courts what the *Brown* briefs movingly called "the most important secular claims that can be put forward by children, the claim to their full measure of the chance to learn and grow, and the inseparably connected but even more important claim to be treated as entire citizens of the society into which they have been born." ("50")

Some were able to shift this question to a future point of view. Wilhelmina Delco from Austin summarized it as a lesson "that it's not enough to change the law" (Alford). Marc Morial, the president and CEO of the National Urban League, observed that *Brown's* "greatest importance" is to be "a source of inspiration for us to continue to do the work that must be done to provide equal educational opportunity for all Americans." Brian Jones, then general counsel for the U.S. Department of Education, said the decision was "critically important....but it has limits. It's one thing to say you can't segregate your schools by law. But the Supreme Court can't mandate where people choose to live" ("Newspaper"). The Court itself agreed with this observation. In a 2002 Supreme Court ruling, Justice Anthony Kennedy wrote, "Where resegregation is a product not of state action but of private

choices, it does not have constitutional implications" (Hackett). All of this makes clear that the courts play a necessary role in establishing racial justice, but getting the buy-in needed at the people level requires the work of persuasion, the rhetorical work, to pick up where the court leaves off. And not just the rhetoric of policy debate or judicial reasoning, but the *communitas* building effects of epideictic rhetoric, and the persistent willingness to both create and exercise the occasions for moving minds to act on the values being celebrated.

But remembering Noel Coward's claim that it is difficult to build consensus, or *communitas*, without agreeing on the question leads to the next dialectical point from the *Brown* decision, and that is the question of whether schools have to be integrated to provide opportunity and equality. The language of the initial decision emphasized the role of education in creating both of these benefits. But Carty and Johnson, along with many others, observe that the Court may have done a disservice to African-American students and teachers by linking both benefits to sharing classrooms with white students. The legacy of trying to integrate, rather than just desegregate, schools, is well known. The fiftieth anniversary provided the opportunity to re-examine this question: the role of integration in education in the twenty-first century, and what values are currently assigned to public education more generally.

The tension exists between the two concepts of (racial) justice and equal educational opportunity, and it manifests mostly in comments made about the reasons for the ongoing achievement gap between whites and other racial groups. Some, like Jim Vandermillen, senior analyst for the Providence Plan, and Gary Orfield at the Civil Rights Project at Harvard, argue that the root cause of unequal education systems is the resegregation factor (Borg). Others, such as John Logan at the Mumford Center, James

Wilson at Orlando's Jones High School, or reporter Joe Rodriguez, argue that integration, or lack of it, isn't the cause at all, but poverty, parental involvement, and other factors are the difference makers (Alford, Brewington, Rodriguez). Beyond the achievement gap, there is division as to the importance of integrated schools to preparing children for the future in a global society. As with the other discursive elements of the *Brown* anniversary, there are gradations of thought on these ideas. Secretary of Education Rod Paige, for example, claimed that "integration is a necessary condition" for quality education (Lerner). The Supreme Court, ruling in the Michigan Affirmative Action cases, argued that "diversity was a compelling state interest" (Bulkeley). But Cheryl Brown Henderson acknowledged "the likelihood that every school in this country would be numerically racially balanced is not going to happen" and that the most important thing is to be able to say "children are getting a quality education...a world class education" (Lerner). The importance of a quality education far outweighed the idea of getting an integrated one in surveys and general comments captured in the media. Rose Williams, a mother of two from Illinois, said "diversity is important because when they go out into the world it's not just going to be people like them. But No. 1 is quality of education" ("Newspaper"). Ms. Williams' comment is representative of many similar comments offered by parents and school administrators. An Associated Press poll revealed that "eighty percent of adults would prefer that their child attend a racially mixed school, but not if it means their children must attend schools farther from home (Farmer). The ongoing dialectical question here is how to achieve a quality education for all students despite the resegregation of schools that follows freely chosen, at least in legal terms, housing patterns. Clarke Rountree noted that among the many things *Brown* could not accomplish was the prevention of "white flight" from major

cities and the resegregation it caused (*Brown* xi). Charles Clotfelter believed school districts should take the lead in providing attractive opportunities, like “attractive magnet-school offerings, school assignments that limit the proportion of low-income students in any one school, and *voluntary* transfers across district lines to enhance racial diversity” (emphasis added). Cross-district measures were denied under *Milliken v. Bradley*, but a voluntary program such as Clotfelter described would fall under the private actors exemption Justice Kennedy asserted.

Many black educators and community leaders lamented the loss of community that followed in the wake of *Brown*, and argued that quality education required that community. The Rev. E. Bernard Hurd in Topeka said “I would prefer that it was just the way it was. You had your community. You had a group of dedicated teachers. You had a lot of parental assistance. Now we’re doing what we were trying to avoid in the first place – busing” (Freedman). Topeka High Principal Clardy Vinson made a similar claim, that “black students had a built-in support system. They were in constant contact with people they could identify with—teachers, parents, pastors—who were working together to help them succeed” (Dobbs “Progress”). In Wisconsin, Lynn Gilchrist acknowledged that schools are part of a neighborhood, part of a community, and having your child walk to school is ideal, “but it’s not always possible” (Weier and Der). The question circles around, in part because court decisions that followed *Brown* commanded specific efforts not just to desegregate, but to deliberately integrate schools and took supervision of districts to ensure compliance, establishing the idea of integration as a necessary condition to find *Brown* had been successful. Observations that resegregation is occurring, such as those discussed above, seem to indicate that *Brown* is not succeeding but lament the lack of concern or outrage

without seeming to recognize the differences from the *Brown* era of state-imposed segregation and voluntary choices, including those made by students. For example, an experiment in a Buffalo area high school showed that even when the school had a diverse student body, the students self-segregated by race in the lunchroom. Efforts to deliberately mix the students worked for a time, but when the researchers left, the students returned to where they felt comfortable (Thompson). It may be the case that the link between *Brown* and directed integration is an example of a value undergoing a “shuffle,” as Sheard calls it, a need for civic discussion to which rhetoric can positively contribute. The central question of *Brown* was whether segregated schools could be equal, and the Court answered in the negative. Now, the dialectical proposition that enjoys general agreement is that the state should not require segregated facilities for its citizens. The more particular dialectical points of engagement now concern whether forced integration is a proper function of the state, and how schools can prepare students for participation in a diverse world, and how to provide equal education despite resegregation and differing economic conditions among school districts. The dialectical process would, in theory, push through to an answer for each of these questions.

The question of *Brown*'s success is the final point of the dialectical engagement, and the fiftieth anniversary itself renders this discussion somewhat moot. *Brown* was celebrated at its fiftieth anniversary at all levels of society from the law to education settings to museums to the arts. But that didn't keep a number of commentators from seeking different verbs for the events. Professors Carty and Johnson claimed they were “less inclined to celebrate...than to commemorate the significance of what it could still mean for this society.” Other writers took a more critical approach, suggesting that the verb

chosen didn't change the nature of the events, and the events themselves were not yet called for. Errol Louis, for example, reviewed several of the anniversary books and articles, and found that although these writers were "armed with far more powerful tools than the NAACP lawyers had decades ago" the conclusion many of them reached about the decision and "what it did and didn't achieve are troubling and often devastatingly pessimistic" (Louis). The *Houston Chronicle* shared his perspective as they wrote, "rather than celebrate this far-reaching victory for freedom and equality, a surprisingly large and diverse contingent of Americans questions the value of the landmark decision" ("Commemorate"). For Leonard Pitt, a black columnist, writing the anniversary column was a chore, something he felt "obligated" to do but not a column he looked forward to. "My problem," he wrote, "is that an anniversary is usually a time for celebration, the record is so mixed that little about it inspires rejoicing" (Pitts). *The South Bend Tribune* concluded, "there is ample reason to raise a glass to Brown's golden anniversary. Remember, though, that the glass is only half-full" ("Brown").

Michael Paul Williams, writing for the *Richmond Times Dispatch*, marked a lack of caring both about the decision and the ongoing state of black student achievement, observing that "rarely does a celebration produce as much ambivalence as today's golden anniversary of Brown v. Board of Education," an observation that indicates the recognition happening in Topeka was not being duplicated in other cities with significant ties to the decision. In South Carolina, for example, home of the *Briggs v. Elliott* case, there was little recognition of the anniversary in terms of events, though *The Post and Courier* in Charleston published a four-day series titled "Brown v. Board of Education, 50 Years Later: A Dream Unfulfilled." In one of those articles, staff writers interviewed Millicent E. Brown,

who in 1963 “broke the racial barrier in Charleston’s public schools” and was at the time of the article a history professor at North Carolina Agricultural and Technical State University. Professor Brown’s observation of the decision was in the same spirit of praise and caution: “1954 is a year to be remembered and Brown is a decision to be respected, but more for its success in removing race as an acceptable, governmentally condoned measure of worth. What it has had to say about the granting of equal educational opportunity for black and poor children is an entirely different dilemma” (“Integration”).

Many writers focused on the idea of equal educational opportunity and for most this was the reason for the take-back comments about Brown. Author David L. Chappell said Brown “made only a glancing blow” at inequality, and therefore, “the 50th anniversary of the Brown v. Board of Education decision this month is a well-deserved feel-good moment for civil rights strategists, but it is only a temporary distraction from the deep conflicts that remain.” Chris Satullo argued that Brown “dealt with a set of facts unique in history,” but cautioned “Brown v. Board, while a watershed, was not by itself very effective. It took a decade for the dismantling of ‘separate but equal’ to occur, only after much pain, bravery and blood that Brown v. Board did more to provoke than prevent.” William Corrigan, president of The Missouri Bar, linked Brown and the 1964 Civil Rights Act, claimed that “the promise” of both “has not been fully realized”. But he concluded that “there have been dramatic improvements in civil rights in the past 50 years. Because of the rule of law, our society is much closer now than 50 years ago to offering equal opportunities to all citizens, and that is worth celebrating.” Robert Dunwell, chair of The Brown Foundation was among those questioning the actual achievement since *Brown*, asking, “Are we celebrating the decision? If so, what do we have to celebrate? We've got nothing to celebrate. We went

from segregation to desegregation to resegregation. We have not achieved integration. We have not achieved racial tolerance" (Biles). Dunwell's remarks focus on the social structure rather than educational equality, and this theme echoes through many of the sentiments on the decision itself and the points of divergence in opinion in the categories discussed above.

Taken together, all these articles show the enormity of the change *Brown* set in motion, and hint at the degree of sustained effort needed to propel society toward that change. *Brown* had become more than just the shorthand name for the decision. It had become a symbol provoking a national conscience and a renewed national dialogue on how "we" want our society to function. This symbolic *Brown* created a sense of duty or obligation to it and what it represented. Sheard argues this is one of epideictic rhetoric's important civic functions, where "disparity between existing and desired conditions becomes the subject of critique...the critique leads to a vision that the audience is not only invited to share but exhorted to help actualize" (779, 776). Several writers make this exhortation. Dennis Hayes, for example, wrote about the need for self-reflection and soul-searching where the decision's promise was concerned, saying "if we are honest with ourselves, we must feel compelled to ponder as well the challenges still before us and our failure to satisfy the rising expectations borne out of the great court decision" ("Quotes"). Anthony Miles emphasized this sense of duty more pointedly when he wrote of the commemorative events that "memory in this sense is both a boon and a burden, and if we let our celebration of the triumph of *Brown*'s moment eclipse our responsibility to shoulder the burden of *Brown*'s legacy, we will have both missed an opportunity and failed to meet an obligation." Judge Robert J. Cordy, who praised the Court for "[standing] up when others would not" also reminded his listeners that equality is 'ultimately up to us—how we as

citizens value and understand equality,” (Gawen). These leaders are in some ways pointing blaming fingers back in time, but are mostly calling on contemporary Americans, those reading the papers and attending the events of the 50th anniversary, to take up the promise of the decision as an obligation, as a duty to the Court, to the students who shouldered the burden of integration, of the lawyers and the families who fought to achieve the decision.

Aristotle taught that the role of the audience in epideictic rhetoric is that of a witness, more than a judge. Hauser, however, argues that this role of witness, the observation of epideictic performance, provides a means for citizens to “participate responsibly” in the decision making or judging processes “whose very proofs require shared assumptions of civic norms” (17). The virtues that seem in evidence and in general agreement in the articles surrounding the 50th anniversary of *Brown v. Board* include courage, determination, and perseverance toward a worthy objective. Additionally, the ideals reaffirmed by the decision include the key American foundational ideals of justice, equality, and freedom. But the most important value for the future may lie just in the continuing of the conversation, the kinds of discussion and asynchronous dialectical engagement reviewed here, to get people talking about the decision and what it meant, what the expectations were and what they should be in the future. As long as there are those who believe the decision should be celebrated, the conversation can continue. If there were only the naysayers, the conversation would fade from the media and arguably from public discourse. News follows events, and events keep the discussion going. And this is the reason why societies need to actively seek the epideictic occasion to provide the means for presenting their values to their members for continued discussion and assent. The events of the past must be kept in memory to be able to build for the future.

This is the point Stephen Browne stressed in his analysis of Hannah Arendt's work. Browne argues that she "reconstituted the conditions of remembrance essential to democratic polity" (62). Arendt argued that the success of the polis was dependent on the ability to remember, to recognize the works and deeds of the past as building blocks to the present moment, and to recognize that "we exist in the world with and through others" and the "political judgment...operates under conditions of plurality" (Browne 50). According to Browne, Arendt drew heavily from Greek antiquity and made a special point of the value of the poets due to "the immortal fame which [they] could bestow upon word and deed to make them outlast not only the futile moment of speech and action but even the mortal life of their agent" (qtd. in Browne 51). The lasting words and deeds provide hope for meaningful action, and that hope allows for "being-with-others" in the world (Browne 49). Arendt's work focuses on the value of remembrance, and also on its opposite, the "persistent and fatal capacity of human beings to forget," a capacity "marked most conspicuously by a failure of judgment," and especially judgment concerning being-with-others (Browne 50). Being-with-others requires negotiating multiple points of view and positions within the political process. This negotiation requires freedom in general, and a place for people to come together. It is, according to Arendt, "through speech and action, words and deeds, that humans enact and affirm their collective identity as political creatures" and it is the memory of past words and deeds that fuels ongoing words and deeds (Browne 51). That memory is reinforced and reinscribed through many means, from formal education to public rituals and ceremonies, occasions that provide for epideictic rhetoric and the poetic forms it can offer. The elements of praise and blame along with stylistic qualities such as amplification give epideictic rhetoric the ability to stir the soul in

ways that pure reason or logic cannot, the kind of soul-stirring that is needed to move toward action on agreed-upon principles.

Ritual, Michael Carter argues, gives epideictic rhetoric its most successful moment, and one critical function of ritual is “enhancing a sense of community among its participants,” thus “breaking down the boundaries that separate people” (216). Sheard observes that these effects of epideictic rhetoric help bring about change in both the personal and socio-political realms (768). Both of these arguments help explain the value of establishing a common narrative about the *Brown* decision, such as was presented at the fiftieth anniversary. It helps to focus the audience on the key values and principles being celebrated and provides for a common understanding on which to approach policy decisions for the future. But the dialectical process is equally important, to work within the generally accepted values of that society to particular opportunities to live rightly.

The significance of this anniversary, a fiftieth anniversary, sparked the kind of “vibrant public realm” that Gerald Hauser claimed epideictic could produce. This, combined with the state of Presumption held by *Brown* provides an ongoing opportunity to consider the ideals, values and goals of *Brown* as social conditions to be resolved through public debate without the intervention of the formal legal structure. It is easy to look at the speeches made in Topeka and even the many similar speeches made at various events around the country and say that they were merely ceremonial, merely the flattery that Socrates described in the *Gorgias*. And it would be easy to say that the state leaders had an obligation to shower these words of praise on the decision because it was fitting for the fiftieth anniversary, particularly since the National Historic Site had been approved, and built, and adopted into the National Park system. It would be easy to argue that these

speeches were of the “feel-good” variety, designed to satisfy the expectations of an American audience already determined to see itself as constituting a great nation, and that the mild reminders that we have not lived up to these ideals were lightly played to avoid disrupting that sensibility. But that reading, plausible as it is, fails to account for the *Brown*’s lingering presence not only in the Court, but also in the many avenues of civic discourse. Mfume said, “we have to talk about it as a nation,” and we ought to, to avoid forgetting, to learn from the lessons of the past (Massie). The next chapter will present the means by which rhetoric, as a field of study and practice, can facilitate that conversation.

Chapter Five:

The Available Means: *Brown* as Agency

In her address to the AARP Life@50+ convention in Las Vegas in October 2004, Coretta Scott King called the decision in *Brown v Board of Education* a “lightning bolt that energized the hopes of Americans for equality...the hope that justice could be obtained through the courts.” She cited several familiar incidents from the Civil Rights era, including the march from Selma to Montgomery, and the bombing of the 16th Street Baptist Church, which she recognized as part of the “increase in racist terrorism” that followed the decision. In contrast to that terrorism, she cited *Brown* as the catalyst for a “prairie fire of non-violent movements that swept the southern states,” and the “explosion of human rights movements in the last three decades.” Mrs. King’s remarks highlight some of the moral and ethical challenges that contributed to the shift in public acceptance of the *Brown* decision.

History scholars studying this shift in the period from the 1950s through the 1970s have argued that the violence of the civil rights movement years, especially the 16th Street Baptist Church bombing, presented segregation as “great evil that had to be eradicated,” and that *Brown* and the subsequent desegregation rulings citing it as precedent gained acceptance as the way to eradicate the evil (Cottrol, Diamond, and Ware 231). Even then, however, *Brown* did not take the kind of center stage it occupied at the point of its fiftieth anniversary. Outside of Topeka, where the international spotlight was most focused, the response to *Brown*’s fiftieth varied. Although the two main themes of achievement and lack of achievement run throughout the comments, the specific responses echo the very dilemma of the initial decision. It was necessary for the country to end formal segregation,

but how to move past that, to achieve educational or racial quality, proved a more elusive question.

The hope Mrs. King cited, that justice could be obtained through the courts, was the achievement President Bush claimed for *Brown* in declaring the theme for National Law Day 2004 as “To Win Equality by Law: *Brown v. Board of Education* at 50.” Racial equality and racial justice are linked in the legacy of the *Brown* decision, perpetuating the notion that equality is a matter of law and the courts are the means for achieving it. Richard Kluger quipped that “American society ... reduces its most troubling controversies to the scope—and translates them into the language—of a lawsuit” (x). Indeed, American national identity prominently features reliance on the rule of law. Thurgood Marshall believed so strongly in the court and the rule of law that he believed the *Brown* decision would lead to full equality for African-Americans by 1963, in part because he believed lawyers and political representatives would take the necessary steps to follow the law once it was declared. The rule of law concept is built into our foundational documents, and the great celebration of *Brown* at its fiftieth anniversary was based on *Brown*’s reaffirmation of those founding ideals.

Remembering that argument is about adherence to ideas – the “stickiness” factor that Malcolm Gladwell finds both valuable and necessary to bring about social change, we might do well to consider that the *Plessy* decision was received positively in part because it sanctioned already existing social attitudes and offered a means for formalizing those attitudes in social structures. Michael Klarman remarks that it is not “that Court opinions *ought* to reflect popular opinion, only that they usually do” (*From* 6). So in the *Plessy* case, the Court functioned to maintain current dominant values, as many would argue is the

Court's proper function. As the "least dangerous", and least democratic, branch of government, the Court chooses the cases it will hear, and by its rulings determines what the law of the land is, particularly and especially in matter of Constitutional interpretation. However, as having "neither purse nor sword," the Court acting alone can do very little, especially to bring about social change. Thus, however minded the Justices might have been to overturn the *Plessy* doctrine, they also knew that they had to have a decision that could be accepted – one that the segregated South would willingly take on. *Brown* gave them that case. But after they ruled, the rest was up to the public. The anniversary speeches given in Topeka indicate this point. At the same time, many of the books and articles published as part of that anniversary recognition offer *Brown* as a prime example of the limitations of formal legal systems to bring about social change, to foster social justice, or to resolve the conflicts and inequities that exist across the social board.

While there are a number of possible reasons why this is true, in this chapter I will argue that it is a question of agency, as described in Kenneth Burke's dramatic pentad, and the result of the distinction between legal justice and tribal justice as Burke describes them. I'll further argue that state institutional actors, such as the Supreme Court, lack the agency to bring about the change in "folkways" needed to resolve social problems; that this gap is one of the civic needs that rhetoric can fill, and that broader study of judicial opinions both as text and in context as the basis for both scholarship and teaching by composition and rhetoric scholars not only provides a better understanding of law as one among many means for solving social problems, but also helps us prepare our students to become active and engaged citizens who can meaningfully contribute to shaping the kind of society they want to live in. In making this argument, I extend earlier work by John

Lucaites, Clarke Rountree, and others on the importance of rhetoric scholars taking up judicial opinions as a focus of study and analysis. I begin with one more look at the *Brown* decision, a pentadic analysis that reconsiders the role of the Supreme Court in that drama. After that, I examine the idea of justice as Burke described it alongside James Boyd White's theory of law as "culture of argument" (*Justice* xii), Walter Fischer's Narrative Paradigm, and the argument by Marouf Hasian, Celeste Condit and John Lucaites that law is the "consensual product of the rhetorical efforts of a variety of public agents acting in concert and contest with one another in an uneven dialectic of unity and division" (338). Finally, I discuss how this extended study of the *Brown* decision and its function at its fiftieth anniversary, along with the earlier scholarship in the rhetoric field on the decision and the several ways it had been studied in that scholarship, provide models for the study of other judicial opinions and the role of such opinions in creating the society in which we live and function.

In the *Grammar of Motives*, Kenneth Burke argues that "any complete statement about motives" will answer the questions of what, when or where, why, how and by whom something was done (xv). He labels these elements act (what), scene (when or where), agency (how), purpose (why), and agent (who), and constructs them under the heading of "dramatism," because they were developed in the analysis of drama (Burke *Grammar* xv, xvii). It's not a stretch of mind to see *Brown* as a drama, one that begins years before the decision, involves many actors and scenes, reaches a pinnacle as the first Opinion of the Court is read, falls away as the second Opinion comes year later, and follows with a continued sequence of action and response up to, including, and even following the fiftieth anniversary of the first Opinion. If the drama focuses on the Opinion, then the Opinion or

decision can be characterized as the act, the Supreme Court becomes the scene where the act took place, the judicial process as a whole, culminating in the deliberations of the nine justices of the Court, is the agency, resolving a Constitutional question becomes the purpose, and agents are the attorneys on each side of the cases involved. This framing would be a logical classification for any decision issued from the Supreme Court.

But this framing also limits the focus to the text produced (the decision) and the elements present in the Court from which the case is considered. These include the briefs, and the oral arguments of the attorneys, the facts of the case and the remedies desired. The context of that case, the conditions, circumstances, interests and individuals that led to the case, are not prominently featured in those documents. Consider, for example, the decision in the case of *Grutter v. Bollinger*, one of the two cases that became known as the Michigan Affirmative Action cases in 2003. In the opinion written by Justice Sandra Day O'Connor, Ms. Grutter is described in terms of her race (white), her GPA, and her LSAT scores, but did not describe her in any other terms, not did it mention that the case was filed on her behalf by The Center for Individual Rights (CIR), a "public interest law firm" in Washington, D.C. that "seeks to enforce constitutional limits on state and federal power" by "aggressively litigat[ing] and publiciz[ing] a handful of *carefully selected cases* that advance the right of individuals to govern themselves according to the natural exercise of their own reason" (Becker, CIR). As the CIR mission statement indicates, they seek cases that put social justice questions through the judicial process. Other organizations follow similar strategies, seeking legal remedies without engaging other kinds of public dialogue on the issues that concern them. The NAACP's efforts can be seen in this same light, but for them, the particular judicial path they chose with respect to ending segregation and/or creating true

equality for African American citizens was one of several efforts on several different fronts, from lobbying Congress, to conversations with the President of the United States, to bringing a series of individual court cases focused on equalizing schools in segregated schools across the South. In either case, the NAACP or the CIR or any similar advocacy group, the analytical question comes down to one of options, of means for achieving the goal or resolving the issue in question. And it is this question of means calls for a different pentadic perspective on the *Brown* decision.

In this framing, one derived from analyses of the decision by Mary Dudziak and Derrick Bell, analyses picked up by Catherine Pendergrast and commented on by Ann Gill, the focus is on the agency element. By recasting the agency, the entire pentad also shifts. The scene broadens, and features the United States of America in its international spotlight as the victor over facism, Nazism, and imperialism in the Second World War. The scene also includes the United States in a Cold War with the recently formed communist Soviet Union for the political allegiance of nations around the globe, some newly independent, and many filled with citizens whose skin color was brown or black and who were being fed propaganda about America's ongoing racial discrimination to undermine America's claims about democracy and freedom. The agent in this alternative view is the NAACP, working on multiple levels to achieve their goals. The purpose is to achieve equality for African American citizens. The act is what Rountree called the progressive argument authored primarily by Thurgood Marshall as he focused his efforts on a particular means of achieving the purpose, the Supreme Court. For the NAACP, the Supreme Court became the agency, or

means, of choice when other methods, including the pursuit through the judicial system of true equality under the “separate but equal” doctrine, stalled⁷.

The difference here is a question of recognized authority. The *Brown* decision called a Constitutional question, asserting that the Fourteenth Amendment to the Constitution of the United States did not allow for the “separate but equal” treatment of African American citizens. In the American legal system, the means for determining a Constitutional question is the Supreme Court, and from this viewpoint, the Supreme Court was the appropriate means for the NAACP legal team as agents to accomplish the purpose of reshaping the conditions of those they represented. For many of the segregated states, or more specifically the leaders of those states, only Congress had the authority to overturn their state laws, and they rejected the Court’s authority to make the ruling that they did. Ann Gill argues that when the Supreme Court “renders a decision upsetting the actions of a democratically elected legislative body,” it must “assert its authority to do so,” as “any rhetorical text must establish its authority to speak” (143). For whom does this authority need to be established? For those who are called on to carry out the law as the Court gives it. Even the stature of nation’s highest Court does not make its authority automatic or its decisions self-executing. They work only when those governed by them willingly assent to their terms and conduct their lives accordingly, and when there is a formal structure in place to separate and punish those who do not. So in the *Brown* decision, the Court needed

⁷ The NAACP retained Nathan Margold, a lawyer from New York to frame their legal strategy for trying to enforce equalization in segregated school districts throughout the South. Margold concluded that this strategy was like “emptying a swimming pool with a eyedropper” (Kluger 133). The Margold strategy, as it came to be known, was the first proposal to take on segregation as practiced and boldly challenge the constitutional validity of segregation if and when accompanied irremediably by discrimination,” and became the foundation for Marshall’s decision to pursue ending segregation rather than continuing to fight for equalization (Kluger 134).

to assert its authority to overturn the laws of several states, laws enacted through the democratic process in those states, and law that the Court itself had earlier given its assent to. In the first *Brown* opinion, and for several cases after that, the Court did not adequately establish their authority. Gill's analysis shows how the Court, in the face of resistance from the Southern states affected by its initial *Brown* decision, moved from a rhetoric of appeasement to a rhetoric of legitimation to establish its authority to make and to compel compliance with the decision it made. This was necessary because the resistance to the *Brown* decision imperiled the authority of the Court and thus imperiled the judicial system as a whole. When Congress later acted by passing the Civil Rights Act, its authority was not questioned because it was the "democratically elected legislative body" (Gill 143).

Burke argues that the American Constitution is different from its English counterpart in a significant way, where the English version presents law a "mere codification of custom" and the American version presents law as "a device for the transformation of customs" (*Grammar* 342). I have argued earlier that the *Plessy* decision that established the separate but equal doctrine was quickly accepted and applied to all levels of social interaction because it codified an existing custom and mindset in the dominant social group. The *Brown* decision, by contrast, intervened in that tradition, and in so doing it provided a "new motive for action" that broke with established custom (*Grammar* 421). The need for the Court to assert its authority is a reflection both of the nature of law as a branch of rhetoric, as James Boyd White classifies it, and of the shift in the nature of justice in ancient Greece as Burke described it.

Burke traces the shift in the ancient notion of justice ancient Athens and the transformation from "the homogeneous tribal pattern of Greek life" to the political state. He

argues that in pre-Homeric times, the Greek word for justice, *dike*, originally meant “custom, usage, manner, fashion” and “right,” and referred to a way of being, represented in the expression “that sort of thing just isn’t done” or “that’s not the way we are” (*Grammar* 15). Burke associates this definition of justice with the tribal state of Greece, where the “way of acting” or “law of being” was imposed by a group with common understanding and expectations of behavior and action. This is the type of justice relates to the notion of folkways, the behavioral expectations imposed by a social group on its members. It contrasts to the idea of stateways, which Burke would describe as the result of the political state, the shift where *dike* came to be “a word of the law Courts” and subsequently to refer to “legal justice, the right which is presumed to be the object of law” (*Grammar* 15). This latter notion is at the heart of the American system of justice, the commitment to being ruled by law, rather than by the will of men (or tyrants).

Burke argues that in this form, justice “could represent a Platonic ideal that might prevail over and above the real ways of the different social classes” (*Grammar* 15). Similarly, James Boyd White argues that the judicial opinion, one of the instruments of justice in the American system, might be better understood if it were seen as “an individual mind or group of individual minds exercising their responsibility to decide a case as well as they can and to determine what it shall mean in the language of the culture” (*Heracles* 41). In the *Brown* decision, the language the Court offered was one of concession to the plaintiffs, that segregation was not equal and not Constitutional, and also a concession to the entrenched “folkways” of the segregated states, allowing for them to determine the path by which they would comply. The ideal would have been for the conditions to change quickly and for all citizens regardless of race to participate fully and equally in all aspects of

American society. The conflict, already inherent in the system of Jim Crow segregation, erupted over questions of authority.

Both of these elements, the ideal and the conflict, can be found in the discourse of *Brown's* fiftieth anniversary. One can hear the voice of President Bush in Topeka as he invoked the "ideals of America" to which "segregation could never be squared." *Brown's* promise was that the law could carry the American ideal in such a way as to overcome the "real ways" of the different racial groups, particularly in the segregated South. But one also sees the words of many writers and some of the speakers in Topeka, noting a range of economic inequalities, including disproportionate poverty rates, funding differentials in school systems, and questions of whether more money for education could overcome less money in the overall community. This type of question is a variation on the ancient question of property interests. Burke claims that "'Justice,' under conditions of economic inequality necessarily gravitates between an 'ideal' and a rhetorical compensation, since it is not 'substantiated' or grounded in the nature of the scene" (*Grammar* 124). He employs the scene-act ratio here in two ways, "deterministically in statements that a certain policy *had* to be adopted in a certain situation," an argument that Mary Dudziak and others have made about the *Brown* decision; or "in hortatory statements to the effect that a certain policy *should be* adopted in conformity with the situation" (*Grammar* 13). The scene-act ratio is a useful way to examine the *Brown* decision where the question of "justice" is concerned, in part because the theory of dialectic materialism holds that the "*material situation* ('economic conditions') [provides] the scene in which justice is to be enacted" (*Grammar* 13). Burke cites Marx's assertion that "'justice can never rise superior to the economic conditions of society and the cultural development conditioned by them.'"

(*Grammar* 13). In civil rights terms, the scene of a systemically racist society limits the ability of non-white citizens to rise in power or economic status despite their abilities, skills, or education. Once again, the distinction between the law and the mindset of the people subject to the law becomes apparent, as those minds must become conditioned to the new motive for action, the new measure of the right way of being in that society.

Burke describes a legal constitution in terms of his dramatic pentad, arguing that it “is an *act* or body of acts (or enactments), done by *agents* (such as rulers, magistrates, or other representative persons), and designed (*purpose*) to serve as a motivational ground (*scene*) of subsequent actions, it being thus an instrument (*agency*) for the shaping of human relations” (341). White describes the United States Constitution as “a rhetorical text: as establishing a set of speakers, roles, topics, and occasions for speech” (*Heracles* 41). Both of these are consistent with one of White’s three images of law, one in which law is “a set of rules issuing from a political sovereign...the rules passed by the legislature or articulated in judicial opinions” (*Justice* xii). White suggests the value of thinking of the law “as a culture...as a set of ways of making sense of things and acting in the world” (*Justice* xiii). The key part of Burke’s pentadic view then is the agency, the role of a constitution in shaping human relations, or as he said of the American Constitution, a means of transforming custom. This is rhetorical process, as individual members of a community are encouraged to follow established law and custom, but when other means of persuading others to change customs fail, the legislative and judicial processes provide a means of transformation, to the extent that the community members respect the authority of those processes and outcomes. Epideictic rhetoric helps provide that respect, helps increase the

mental adherence to the values of the community so that they emerge in democratic processes such as voting, and is therefore a valuable part of life in the democratic *polis*.

Epidictic events provide stories, the stories a community tells about itself, and *Brown* has proven central to America's story of itself. Jack Balkin referred to this story as the Great Progressive Narrative, a story in which America is "continually striving for democratic ideals from its founding and eventually realizing democracy through its historical development" (5). In this narrative, "the Constitution reflects America's deepest ideals, which are gradually realized through historical struggle and acts of great political courage" (Balkin 5). Although written well before President Bush's speech in Topeka, the narrative Balkin describes is clearly present in that speech, and *Brown* is one of the acts leading to the realization of those ideals. Ann Gill argues that the *Brown* decision is the star of this narrative, that "the stature of the case grows with each passing decade" and that "like all good stories, this narrative improves with each telling" (163). *Brown* is an example of law that shapes human relations; it tells us how to be, or more specifically how not to be, within our civic lives. It is a story easily understood by the average citizen, just as the original *Brown* opinion was written to be read by a wide lay audience.

White's first image of law, that of a set of rules, supports the belief in law as neutral, as a rational mechanism for sorting out facts and logically applying relevant case or statutory law to the issues. Justice in this belief exists when similar rulings are consistently given in similar conditions (like cases produce like results). This belief formed the basis of Wechsler's complaint against the *Brown* decision, that it violated the spirit of neutral principles. The second view White offers, one identified with the Critical Legal Studies movement, aims to pierce the veil of seeming neutrality to explore the "real" power issues

behind the decision. This view informs analyses such as Dudziak's and Bell's. The third view, that of law as a way of making sense of the world and understanding how to be in that world, fits more consistently with Aristotle's ideas about the value of epideictic rhetoric. The epideictic speech, through praise and blame, showed citizens how to behave, and what it took to be virtuous in their community. For Perelman and Olbrechts-Tyteca, such speeches served to increase communion among the hearers, to increase their identification with the values of the community and to move them to live by those values. As individuals move toward shared values, they become, in Burke's term, consubstantial, acting together in their shared world while retaining their individuality and independent motives for action (*Rhetoric* 21). The narratives provided in epideictic rhetoric help foster this sense of sharing, as they invite the audience to identify with the narrative and its characters.

In Walter Fisher's work, this is a paradigm for understanding the world, a narrative paradigm that subsumes the rational world model. Fisher characterized humans as being "as much valuing as they are reasoning animals." In Fisher's construction, narration is "a theory of symbolic actions—words and/or deeds—that have sequence and meaning for those who live, create, or interpret them" (266). Following this description, the narrative paradigm views human communication as "stories competing with other stories constituted by good reasons" in which argumentative discourse can be one form, but where rationality can also exist when the demands of narrative probability and narrative fidelity are satisfied (Fisher 266).

Fisher classifies the rational world paradigm as the reigning one, dating back to Aristotle and beginning with the presupposition that humans as "essentially rational

beings" (268). In this model, the mode of communication is argument, the conduct of which is ruled by the situation, with rationality measured by knowledge of the subject matter, of argumentation, and the rules of advocacy, and the world constructed as a set of logical puzzles to be solved. In other words, the model Burke and White establish as views of constitutional law. This model carries with it certain requirements, including a society that permits participation in decision-making, a common language, a general adherence to values of the state, information about the issues and an understanding of argument forms. These requirements, along with the general requirement of that being rational "*must be learned*" (269) make this model the basis for education in the West.

In contrast to the reigning model, the narrative paradigm begins with the presupposition that "humans are essentially storytellers." Decision-making and communication proceed from "good reasons" which vary in form between situations, genres, and media, and are governed by history, biography, culture, character, and the forces of the "language act". Humans in this model determine rationality based on an "inherent awareness of narrative probability" and the habit of "testing narrative fidelity" (272). The world, then, is a set of stories, competing stories, and men choose among them to live the good life. The narrative paradigm subsumes the features of traditional rationality in part because it is a capacity all humans share. This leads Fisher back to Burke in his claim that "the operative principle of narrative rationality is identification rather than deliberation" (273).

Fisher claims the difference between the rational world and narrative paradigms are structural rather than substantive, since both are modes of "expressing good reasons" (279). When the metaphor of *homo narrans*, the metaphor of narration, is taken as the

master metaphor, it subsumes other metaphors such as "rational man." Thus, analyzing *Brown* or any other judicial decision as one story among other competing stories places *Brown* in the literature of social reform, not separate from its role in law, but enfolding or subsuming that role. White argues that this is a valid way to think about law, not law and economics, or law and sociology or literature, but law as economics, law as sociology, or law as literature. This view would return law to a more central part not only of education, but of public discourse more generally.

Burke argues that the dramatic element of agency finds its philosophical counterpart in pragmatism (*Grammar* 129). The means for achieving a legal sense of equality in *Brown* became judicial rather than the legislative or executive avenues of government because the latter avenues weren't progressing, weren't working to achieve the goal. In turning to the courts, and especially to the focus on eradicating segregation rather than providing for true equality, the NAACP took a pragmatic approach and appealed to the fundamental American value of "all men are created equal". In the *Brown* decision, the path to the Supreme Court followed a series of legal cases that focused on ending the separate part of the separate but equal doctrine. Clark Rountree analyzed this path as a form of prospective argument, one in which every step was calculated to lead to the next without creating any obstacles (50). The histories of the *Brown* decision⁸ reveal the many options the NAACP legal team considered in their efforts to achieve racial equality, including early lawsuits focused on enforcing the equal part of the separate but equal doctrine in education. The records show that ultimately it was Thurgood Marshall who shifted the entire effort to ending segregation rather than continuing to work for

⁸ Kluger is the best known and most detailed of the histories, but see also Klarman; Tushnet; Cottrol, Diamond and Ware; Cobb, and Ward and Badger, as examples.

equality enforcement in individual cases (Kluger 284, 294). Rountree explains how the cases that followed represent a unique form of argument suited to social problems:

Prospective argument looks to social movements, not just as events or phenomena, but as context for shaping future arguments. It looks to individual court decisions, not as completed arguments, but as strategically anticipated stepping stones toward future arguments. And it considers how material interventions can be undertaken specifically for subsequent incorporation into rhetorical strategy (50).

The link to rhetorical strategy is significant here. Individual court decisions, or even the entire sequence of court decisions, are not a complete effort. Other “material interventions” are required. As Leonard Pitts, Jr. observed in the anniversary column he didn’t really want to write, “the moral of Brown, then, is that the law has limits. It could ensure black kids the right to attend the school nearest their homes. It could not ensure that white kids would still be there when they arrived.” These interventions took many forms after the *Brown* decision, mobilizing both the resistance efforts of the southern states and the liberating campaigns of such groups as the Freedom Riders. Michael Klarman argues that reactions to a court decision show its efficacy through such factors as the intensity of opposition, or the success at capitalizing on the decision (7). Klarman also argues that studying only the direct effects of a Court decision doesn’t provide the whole story, and that’s its equally important to study the indirect consequences (7). I argue that it’s important to study Court decisions as consequences as well, consequences that result from what Klarman calls “a method of social protest that is distinct from alternative methods, such as political mobilization, economic pressure, street demonstrations, and physical resistance” (7).

Litigation is one method of using language to achieve results, but it is not the only method, and the alternatives Klarman describes are all influenced by language in action, and can be enhanced through application of rhetorical theories and practices.

In the epideictic addresses of the fiftieth anniversary, and particularly those in Topeka, individual citizens are called back into participation in and responsibility for *Brown's* legacy. The claims about doing more, or committing or recommitting to the promise or the hope or the obligation to the promise, are all voiced in the "we," the presumed agreement that all who hear (or read) are in agreement that these are our goals as a society. The fiftieth anniversary thus provided an epideictic occasion for re-presenting the core values of equality, education and opportunity to a wide audience. The dedication ceremony timed almost exactly to the moment of the decision's announcement fifty years earlier, the theme for National Law Day, the sheer number of dignitaries in attendance in Topeka and making appearances at event around the country, all served to reinforce the value of *Brown* and to re-connect it to foundational American ideals. The honor given to the Court in these speeches and articles and events was necessary to overcome the observation that the agency, the means for achieving the action, the Court, had not successfully accomplished the purpose of the action.

The discourse of the fiftieth anniversary shows the shift in the agency for achieving *Brown's* promise going forward. The speeches, articles, and events asked the public to analyze *Brown*, to think about it, discuss it, to commemorate it, to find meaning in it and define that meaning. Many writers indicated that the courts were not the place for continuing this discussion, and, as Kweisi Mfume claimed in his remarks, Americans have to talk about it as a nation. And part of what Americans have to talk about as a nation is the

role of the courts and the many decisions that have been handed down regarding the various methods attempted for achieving equality in education. We have to be able to talk about the law, to have a framework for discussing social problems in both legal and extra-legal ways. And to do that, the discourses and texts of law need to be recovered from the segregated realm of the lawyers. In the early 1990s, John Lucaites called on rhetoric scholars to do just that, to take up the texts of the law as a field to study and to “actively engage the full range of formal and functional relationships between rhetoric and ‘the law’” (447). Lucaites argues that rhetoric scholars have a “particular responsibility” to shape the kind of society we want to live in, and that engaging the law is part of that responsibility. In 2004, when Rountree’s edited collection titled *Brown v Board of Education at Fifty: A Rhetorical Perspective* appeared, he argued that rhetoric scholars were answering this call, in growing numbers since the 1980s. He also noted that many of the scholars who have contributed to this field of study hold law degrees, and that indicates that there is more work to do to open up this avenue of study for the larger rhetoric and composition field. Rountree didn’t even mention composition and rhetoric programs in his listing of places where “those who study rhetoric find their homes” (xii). Judicial opinions are composed texts and can be studied and taught as such even without specialized training in the law.

The *Brown* decision is an excellent case for introducing rhetorical study of judicial opinion for three main reasons. First, Chief Justice Warren and his clerk, Earl Pollock, wrote the opinion in language accessible to the average newspaper reader. The opinion is comparatively short and easy to understand. There are minimal footnotes and few citations for other cases. The claims are direct and clear.⁹ This makes the opinion a suitable text for

⁹ See Bellman for a detailed analysis of the opinion’s structure.

classroom use in undergraduate studies as well as for graduate work. Secondly, the fiftieth anniversary made it possible to examine the role of the decision years later not by noting the number of times it had been cited in legal cases or by reviewing legal analyses, but by being able to see, consider, and analyze public reaction to it, to see it discussed and reconsidered and assessed in the public sphere. There are certainly many invitations within that anniversary discourse to go into further research on the history of the cases or the legal citations or subsequent opinions and their rationale, and this offers the third reason the case an excellent beginning, precisely because so much has been written about it for so long, including the rich and history Kluger provided. Scholarship on *Brown* covers a range of academic disciplines—law, certainly, but also education, political science, history, and sociology. The 1992 legislation authorizing the National Historic Site, itself a valuable and instructive text for analysis, provided a timeline and a foundation for others to build on, so that what might have been one more national monument came to carry with it a host of writings and events that built the significance of the *Brown* decision to new heights. The Brown v Board of Education National Historic Site provides a place for additional kinds of analysis, including archival research this researcher hopes to be able to conduct in the near future. The Library of Congress holding provide hundreds of artifacts for consideration and analysis, and the Voices of Civil Rights project offers oral testimonies that can be studied and analyzed by scholars of rhetoric. This particular case offers enormous possibilities and options for study beyond the study of the opinion itself. And while it is a unique case for this kind of study, *Brown* is not the only case that can be so analyzed or discussed; there are many significant legal cases that address social challenges and questions of personal rights that followed *Brown* that will have anniversaries in the future, that may have public

reaction to their anniversaries, or that may be the topic of ongoing public debate, as *Roe v Wade* continues to be, or may just be the subject of an ongoing public debate over issues of social justice, equality or opportunity. Any of these cases provided a means for engaging the intersections of rhetoric, the law, and social interests.

In his 1990 article, Lucaites invoked the fictional contract law professor Charles Kingsfield from the 1973 movie *The Paper Chase*. Kingsfield, brilliantly portrayed by actor John Houseman, invoked what has become a commonplace in legal studies. Explaining to his class the reasons for his use of the Socratic method, he concluded, “you teach yourselves the law, but I train your minds. You come in here with a skull full of mush, and you leave thinking like a lawyer.” This phrase indicates that one must “think like a lawyer” to be able to discuss and learn the law. I argue that this is not true. The law, and analysis of the law and its effects, need not be restricted only to those having specialized training as lawyers. Like White, I believe law is best seen as a branch of rhetoric, and that those trained in rhetoric are as able to interpret and analyze law as law scholars. White argues “the rhetorician, like the lawyer, is...engaged in a process of meaning-making and community-building of which he or she is in part the subject” (*Heracles* 40). Rhetoric scholars are uniquely qualified to engage this material because our field of study is all the texts and contexts that comprise the world we inhabit, historical and contemporary, academic and popular, generalized or specialized. Burke, for example, argued that rhetoric is “precisely what is needed to understand...all forms of discourse” (Bizzell and Hirshberg 1295). Legal texts and contexts are a part of society, emerging from streams of discourse, concerns and causes that motivate individuals to act, to garner support for a position and find advocates in positions of authority to take up that position, sometimes proposing legislation,

sometimes challenging existing legislation. We can become the exemplars of engaged citizenry by studying and analyzing judicial texts, as well as discussing them in relation to other available means of advocacy or political action for a given cause.

The judicial opinion itself makes a good starting point, and previous analyses of the *Brown* decision by rhetoric scholars offer a series of methods for beginning the work. These methods can be classified into four general categories: analysis of the arguments leading to the text; analysis of the text itself, both stand-alone and as part of a continuum of judicial opinion; analysis of the text as an example of a rhetorical practice; analysis as a case study in a larger field of analysis; and analysis as the basis text for responses. One of the earliest of these entries is a 1963 article by David B. Strother that focused on the rhetorical use of social-science evidence in the case. The use of social science evidence in the Opinion was one of its most controversial elements, and forty years after Strother's essay, David Droge re-examined that evidence and the criticisms of Warren's reliance on it in the Opinion. Droge argues that the legal team worked within the constraints of their rhetorical situation, as did Warren. This is similar to the claim Hasian, Condit and Lucaites made about Supreme Court opinions generally, and all are example of analyzing the reasons offered in support of an argument, and the quality of those reasons. This basic rhetorical analysis process can be applied to virtually any Court decision, such as Justice O'Connor's Opinion in the *Grutter* case described above. But it could apply equally well to an examination of the reasoning in the 2000 case *Bush v. Gore*, which determined the shape of national leadership with consequences that continue to affect the nation on multiple levels today.

While Strother looked at the case for the use of evidence and how it appeared in the opinion, Milton Dickens and Ruth E. Schwartz analyzed the oral arguments made by

Thurgood Marshall and his direct opponent, John W. Davis, before the Court. This was both an analysis of the specific arguments, and of those arguments as indicators of the “distinctive characteristics of oral argument in major cases before the Supreme Court” (33). Their study was quantitative, examining and coding transcripts and comparing actual with reported acts. The article contrasts the argument styles of these two attorneys and shows how each responded to the unique environment of the Court. They note the formal, elegant manner of Mr. Davis against the more folksy style of Mr. Marshall, an observation made by legal scholars and historians as well. Dickens and Schwartz do not comment on *Brown* as a decision, except to note that “Marshall’s strategical choices coincided much more closely with the Court’s verdict than did Davis’ choices” (41). This article is useful not only as a way of analyzing language in a particular situation, but for its method of coding and comparison.

Judith Diamondstone made observations similar to those of Dickens and Schwartz about the rhetorical styles of Marshall and Davis in her 1997 work comparing the arguments of seventh graders in a classroom re-enactment with the actual historical records from the *Brown* decision. In her discussion of the historical argument, she not only notes the differences in style between the two attorneys, Davis’s “eloquence that harked back to an aristocratic South” and Marshall’s “disregard[...] [of] formal syntax” and “inconsistent...use of tense and perspective,” Diamondstone focuses on register, and the several ways that Marshall’s demeanor demonstrates Bakhtin’s notion of “double-voiced discourse” (210). She observes further that the concept of register can help teach schoolchildren that “meanings are made on different dimensions of social life simultaneously” (216). This concept also helps to explain how *Brown* came to mean in different ways to different social groups both during and after its issuance. More

importantly, Diamondstone's work shows how easily this particular decision can be taught and understood by non-lawyers. Her re-enactment with seventh graders is similar to David Fleming's undergraduate class called "Writing and Reasoning: The Jury Project," a writing course in which students examined the documents related to a current Supreme Court case (2003-04 term) to make their own arguments about how the case should be decided. This model could be duplicated to introduce students to both the workings and written documents of the Court and to judicial responsibilities of citizens, including their potential role as jurors.

Like Dickens and Schwartz, Martin Bartness also focused on difference in his rhetorical analysis of the *Brown* decision. Bartness examined how the Justices, coming as they did from different schools of legal philosophical thought came together to produce a unanimous decision. Bartness employed genre analysis to show that three schools of thought, naturalism, realism and positivism, rather than being mutually exclusive, can have a "dyadic combination or fusion" that makes unanimity possible even in the presence of differences (55). This article offers a model for a more theoretical and philosophical approach to reading judicial opinion, one that might require additional reading and might therefore be best suited to graduate or post-doctoral study.

Kathryn Bellman examined the controversial nature of the decision in her 1990 dissertation (English) that featured a line-by-line analysis of the language in the decision, after which she concluded that it "was neither carelessly nor hastily written," as some had claimed. This detailed textual analysis "reveal[ed] the purposefulness of [the Opinion's] logic and rhetoric" (195-196). Her initial question (similar to that motivating this project) had been about the controversy surrounding the *Brown* decision, a decision whose time,

she argued, had clearly come. Her analysis responded to claims that the Opinion itself was at fault for not having been written in a way to accomplish its task. While acknowledging some “communicative problems,” Bellman argues that the reasoning in the Opinion fell “within the range of acceptable interpretations of the Constitution” and that criticisms of the decision came from political value or disagreement with the decision. Her project, perhaps more than any of the others here, shows that standard tools of rhetorical analysis can lead to clear and appropriate claims about judicial opinion regardless of the researcher’s primary academic affiliation.

Political values and disagreements figure heavily in other studies of the *Brown* decision, particularly studies that examine the precedent case, *Plessy v. Ferguson*, as Marouf Hasian, Jr. did, or those that examine the political acts of resistance that came after the decision, as Ann Burnette did. Burnette analyzed the rhetoric of the massive resistance movement that followed the *Brown* decision, arguing that the claims of states’ rights underlying the resistance were diminished and the motives suspect because of the inclusion of arguments about race. “If the states’ rights argument were truly transcendent,” she argues, “the race argument would not be necessary” (138). Hasian’s examination of the *Plessy* decision challenges the traditional presentation of this decision as a dichotomy between the majority opinion and sole dissenter, Justice John Marshall Harlan, and looks to the social, political and economic contexts within which *Plessy* was decided. Hasian argues that there were many views to consider in the discourses about race in Louisiana at that time, and that “communication scholars have the obligation of illustrating some of the complexities” of such a case (17). Daniel Mangis examines the rhetoric of Justice Harlan’s dissent as prophesy, and as a way of illuminating a decision by casting different light on its

circumstances, while Ann Gill shows how the language of Supreme Court opinion in cases that followed *Brown*, specifically *Cooper v. Aaron*, moved from that of appeasement and gradualism to one of authority and duty to comply as the political resistance amplified. Each of these provides a way of examining the contextual elements of a judicial opinion and analyzing the effects of that opinion through both legal and social paths.

A slightly different approach to the opinion itself is to examine key phrases, particularly those that seem to take on a life of their own, such as “you have the right to remain silent” that has come to represent the 1966 ruling in *Miranda v. Arizona*, the “hanging chad” that stand in for *Bush v. Gore* or the separate but equal phrase the underlies the entire *Brown* sequence from *Roberts v. City of Boston* through *Plessy* and up to the Michigan cases. Hasian and Geoffrey D. Klinger traced the two terms, “separate” and “equal.” back through the pertinent decisions to shows how a series of competing discourses about the meaning of “equality” led to a particular view being inducted as law, thus limiting the choices available to future litigants and judges. The authors examine the rhetorical groundwork laid in the 1849 *Roberts* decision, and argue that “America’s dominant tales about the ‘separate but equal’ doctrine are filled with irony and tragedy at multiple levels” (270). The article draws on Northrup Frye’s work that constructs irony as one of the four central narratives in literary tradition and on Kenneth Burke’s work on the tragic frame, both of which offer “more realistic way to look at the power of America’s infatuation with the ‘rule of law’” (271).

In the anchor essay to the collection he edited, Clarke Rountree discusses *Brown* as an example of a rhetorical practice, in this case of prospective argument, a process not only of arguing the present case, but also building the grounds for successful future arguments

(49). Rountree shows how the team had to establish the speaker, prepare the audience, fix the message, find the occasion, and most importantly, find the timing, and to do all of this at each successive step while simultaneously building the courts files from which the Supreme Court would base its Opinion and not creating any situation that would give the Court a place to rule against them. Rountree's theory is of his own making, but other opinions might reveal different argument structures (such as a Toulmin form, or a Rogerian form, which is one way to look at Droge's article, or a formal syllogistic argument), and can present opportunities to examine appeals and audiences as well as types of argument.

In another article that focused on *Brown* as an example, David Hunsacker offered one of the first studies to show how the *Brown* decision functioned in society. In his 1978 article, Hunsaker argued that the rhetoric of *Brown* "was and is paradigmatic of the rhetoric of social protest" in the twenty-five years between *Brown* and the article's publication (93). His analysis focuses on the "potential and actual reality change of the rhetorical situation in *Brown*" and argues that "the rhetoric in *Brown*...provide[s] the *topoi* and *commonplaces* for future litigants" in other discrimination cases (94). Significantly, Hunsaker demonstrates that litigation is always "polarized," an adversarial exchange without middle ground, and that civil rights litigation involved many opposites, "equality-inequality, black-white, rights-duties," etc. Hunsacker claims that "justice may be the 'god-term'" for social protest groups, that the central meaning of the term in such protest is "equality before the law," and that "justice as equality has permeated protest rhetoric since *Brown v. Board of Education*" (104). Hunsacker's theory of justice as god-term can be applied to social protest rhetoric since his article's publication, a study beyond the scope of this project, and also to the more recent analyses and legal arguments surrounding cases involving race and

education. It also provides a useful starting point for examining other ways that rhetoric figures into social movements, a comparative point on how a judicial opinion proved foundational to other rhetorical strategies. Charles J. Stewart, Craig Allen Smith, and Robert E. Denton, Jr. provided an excellent companion book for this type of analysis with their *Persuasion and Social Movements*, where they argue that social movements “exist and operate primarily from *outside* established institutions” (6). Their analysis of how social movements work and how persuasion figures into them offers the potential alternative discourses available to social justice advocates that function outside the limiting language of a lawsuit.

Some of these limitations provide the foundation for Catherine Prendergast’s award-winning book in which she examines how *Brown* functioned in society with respect to literacy. Titled *Literacy and Racial Justice: The Politics of Learning after Brown v. Board of Education*, Prendergast’s work examines *Brown* as part of a continuum of judicial opinion, covering the specific period from *Brown* in 1954 through the *Bakke* decision in 1978. Prendergast argues that since *Brown*, “literacy and racial justice have become intertwined in the American imagination” and that it was the *Brown* decision that “fixed the notion of education as the path to equal opportunity” (1, 2). Drawing from Critical Race Theory, Prendergast reviews the history of *Brown* with a specific view to the construction of literacy as White property, and argues that the *Brown* decision served to reinforce that concept (11). Prendergast also looks to the Supreme Court decisions on education that came after *Brown* to show that the “economy of literacy as White property” has been the dominant focus of the debates over racial justice since the *Bakke* decision in 1978. Guided by Critical Race Theory scholarship, Prendergast argues that judges are influenced by

culture, sometimes more so than the rule of law and precedent. Her claim is supported by Anthony Amsterdam and Jerome Bruner, whom she cites, and also by legal scholars such as Michael Klarman and Mark Tushnet (whom she does not). This assessment of judicial reasoning questions such principles as legal racial neutrality or colorblindness and argues that racism is a norm rather than an aberration in the United States (12). Her analysis ties back to the ways of examining the law James Boyd White gave us, and makes a supporting case for examining judicial opinion as part of a culture of argument.

Rhetorical analysis of judicial opinion can produce meaningful scholarship about the nature of justice in our country. As Jack Balkin argues, "whether we realize it or not, each of us is always rewriting the central texts of our political heritage. In each generation we add new meanings and glosses to those texts based on our own experiences and understandings" (71). Justice Breyer wrote, "*Brown's* simple affirmation helped us to understand that our Constitution was meant to create a democracy that worked not just on paper but in practice." To accomplish that, citizens need to be able to understand the Constitution, and the reasoning the advocates and judges use when making arguments that involve its terms. We, the people, by our shared values and the celebration thereof – epideictic occasions—create the framework for judicial opinion. But we also create the public discourse that offers alternatives to the judicial process for realizing social goals.

The Justices in the *Brown* decision stepped into what Kluger called a "moral void" to make the decision they did. Maybe in their time, there really was no other solution. But recognizing that the law is only one arena in which solutions to social concerns/issues are negotiated allows comparative of legal processes alongside studies of the rhetoric of social movements and persuasive advocacy that focus on efforts outside of the courtroom, efforts

that attempt to move minds to action by linking causes with ideas and values. The law is also a product of advocacy, which is why law students study rhetoric, to be able to form and support arguments that win the day. By reclaiming the discourse of law (judicial rhetoric) the discipline of rhetoric can position itself as not just an academic specialty, but as a central part of education where students are provided with the tools and the understanding to engage in public discussion about the laws that govern them as well as about the social issues of their time, and about alternatives to lawsuits, or the means to create the social climate under which laws can be changed. Law is a public good, and is vital to democracy, but talking about law in abstract terms, rather than actually reading and analyzing law, leads to mythologizing about law, producing the kinds of myths about what a particular decision did or didn't do, or what the justices were or were not thinking, that Cheryl Brown Henderson and her colleagues hoped to dispel in their creation of the Brown Foundation and the Brown v Board of Education National Historic Site.

The challenge for us, now, in the twenty first century, is to reclaim legal discourse and to return the discussion of what is just and what is a good society into the public realm, rather than allowing such matters to be crafted in the language of a lawsuit and left to the realm of legal initiates. What is needed, as Lucaites argued, is to think "about 'the law' as a rhetoric," as "language-in-action" (446), and thus understand that it is malleable, that it can be changed and adapted as social conditions and needs change. We must claim *Brown* and other judicial opinions as rhetorical events, to analyze them textually and contextually as we might any other text, to demystify the texts that are "the law" and see them as artifacts, albeit artifacts deeply imbued with authority. We must examine them as "a stage in a conversation" (White *Justice* 101) and we must ask of this conversation if it will lead to the

kind of society we want, if it will lead to the kinds of diversity and full participation we imagine in the pursuit of a just society. We must be able to find the ground upon which we, collectively as citizens of a free and democratic society, can reason our way into a common sense of what is just, to find a shared vocabulary to discuss social problems and injustices without resorting to the limiting language of a lawsuit. To persuade folks to change their ways in daily life, to persuade individual people to accept a change in their social order and practices, requires more than a declaration of change, no matter where that declaration comes from. Rhetoric provides us with the most promising means to accomplish that goal. Understanding the persuasive value of epideictic, and the ways in which epideictic events shape communal values that lead to deliberative and forensic rhetorical practices is one way of making the specialized language of law and the impact of legal decisions more accessible to both the students we educate and the society to which Lucaites argued we owe a “particular responsibility.” Taking up judicial opinion as texts of inquiry for both scholarship and teaching is another, a means for reclaiming law as a branch of rhetoric, and reestablishing rhetoric as a valuable and central part of life in a democracy.

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Curriculum Vita

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Education

- Current *Syracuse University*, Doctor of Philosophy, (Composition and Cultural Rhetoric)
- Dissertation Title: “(re)Constructing a Landmark: A Rhetorical Analysis of *Brown v. Board of Education* at Fifty”
- Exam Areas: Rhetoric and Democracy
 Contemporary Forensic Rhetoric (Rhetoric and Law)
 Globalization (interdisciplinary)
- 2002-2004 *Syracuse University*, Master of Arts (English).
- 2000-2002 *University of Washington*, Bachelor of Arts, *magna cum laude*, with departmental distinction in English.
- 1998-2000 *Edmonds Community College*, Associate of Arts degree.
- 1988 *The American College*, Master of Science in Financial Services

Academic Employment:

Cazenovia College, Assistant Professor of English, Director of Academic Writing

- English 101 – Academic Writing I
- English 201 – Academic Writing II
- English 241 – Children’s Literature
- Comm 301 – Speech and Rhetoric
- FA 151 – Introduction to Visual Culture
- First Year Seminar: Financial Literacy
- First Year Seminar: The Secret Life of Money
- Senior Capstone - Humanities

Park University, Adjunct Instructor

- Health Care 463 – Third Party Liability and Risk Management
- EN 106 – First Year Academic Writing Seminar II: Academic Research and Writing
- EN 306B – Professional Writing in the Disciplines: Business Writing

Edmonds Community College, English Instructor, Sept. 2006 to June 2009

- English 205 Research Writing (CD) – Theme: Globalization
- English 105 Analytic Writing (CD)
- English 100 Intro to College Writing

Syracuse University, Graduate Teaching Associate, 2002-2007

- Writing 105 Studio 1: Practices of Academic Writing
- Writing 109 Studio 1: Practices of Academic Writing (Honors)
- Writing 195 Studio 2 for Transfer Students – Topic of Inquiry: Globalization
- Writing 205 Studio 2: Critical Research and Writing – Topic of Inquiry: Globalization
- Writing 205 Studio 2: Critical Research and Writing (online). Topic of Inquiry: Social Networking Software
- Writing 209 Studio 2: Critical Research and Writing (Honors) – Topic of Inquiry: Globalization
- Writing 307 Advanced Writing Studio: Professional Writing

Other Teaching Experience

Facilitator, *Edge Learning Institute*, 1997-98

- “Increasing Human Effectiveness”

Facilitator, *The Pacific Institute*, 1996

- “Investment in Excellence”

Instructor, *Insurance Institute of America*, 2000

- Introduction to Property-Casualty Insurance

Instructor, *The American College*, 1996-1997

- HS 313 – Individual Health Insurance
- HS 325 – Group Benefits
- HS 340 – Advanced Topics in Group Benefits

Conference Papers

““Forever and For the Better”: Epideictic and the Dedication of the Brown v Board of Education National Historic Site.” Rhetoric Society of America. “Re/Framing Identifications.” Philadelphia, Pennsylvania, May 2012.

“Judicial Rhetoric as Motion: *stasis* theory and ‘the law’.” (accepted). Rhetoric Society of America. “Rhetoric: Concord and Controversy.” Minneapolis, Minnesota. May 2010.

“WAC at TSC.” Writing Across the Curriculum 2010. Bloomington, Indiana, May 2010.

“Rational Empathy: The Sotomayor Hearings, Neutral Principles, and the Narrative Paradigm.” Association for the Study of Law, Culture and the Humanities Conference. Providence, Rhode Island. March 2010.

“Rhetoric and ‘The Law’: *Brown v. Board of Education* and the Value of a Rhetorical Perspective.” 2008 Conference of the Rhetoric Society of America. “The Responsibility of Rhetoric.” Seattle, Washington, May 2008.

"The Promise of Reason and The Legacy of Brown: Reclaiming Legal Discourse." The Promise of Reason Conference, University of Oregon, May 2008.

"True Women Go Shopping: The Department Store and the (Rhetorical) Reconstruction of a Woman's Place." American Society for the History of Rhetoric, National Communication Association Conference. "Creating Sites for Connection and Action." San Antonio, TX. Nov. 16-19, 2006.

"The Gentleman is White." Victorian Studies Association of the Western United States Conference. "The Presence of the Past in the Victorian Age." Malibu, California. October 26-28, 2006.

"The Limited Liability Company." Victorian Studies Association of the Western United States Conference, "Victorian Innovations", Seattle, Washington, October 21-23, 2004.

Publications

"Deliberative Skills for Citizenship." Article for 'The Key Reporter,' a publication of the Phi Beta Kappa Society, forthcoming (Spring '08).

"Walk On A Winter Evening." Original Poem. *Between The Lines*. Edmonds Community College. 2003.

"Wrong Turn." Short Story. *Between The Lines*. Edmonds Community College, 2002.

Other Presentations

"Writing the Transnational: A multi-disciplinary approach to the Writing Studio." The Writing Program Spring Conference, Syracuse University, 2004.

Service

Cazenovia College, General Education Committee (member). 2008 - present.

--- Honors Committee (member). 2008 - 2012.

--- IRB Committee (member). 2008 - 2012.

--- Writing Across the Curriculum Committee (chair). 2009 - 2012

--- Teaching Development Faculty Steering Committee (chair) 2009 - present

ETS, AP English Exam Reader - 2006, 2008 and 2009

ETS, AP English Course Auditor - 2007

Syracuse University, CCR Intern (administrative)

Syracuse University, Professional Development Seminar, "Writing, Rhetoric, and the Law: Partnership Possibilities with the College of Law." - 2006

Syracuse University, Writing Program Upper Division Committee, member. 2004-05.

Syracuse University, English Graduate Organization Facilitator. 2003-05.

Syracuse University, Writing Program Summer Planning Team for new TA Training. 2003.

Honors/Awards

Syracuse University, University Fellowship, multiple year award 2004-2008.

Future Professoriate Project, Syracuse University, 2005-present

Phi Beta Kappa. Elected 2002.

Other:

Professional Credentials (Financial Services)

Certified Employee Benefits Specialist (CEBS)

Chartered Financial Consultant (ChFC), *The American College*

Chartered Life Underwriter (CLU), *The American College*

Chartered Property Casualty Underwriter (CPCU), *American Institute for Property & Liability Underwriters*

Registered Health Underwriter (RHU), *The American College*

Advanced Pension Planning Certificate, *The American College*

Associate in Management Certificate, *Insurance Institute of America*

Continuing Education and Professional Development Presentations

"Holistic Retirement Planning." 1-day seminar, *University of Washington*, 2002.

"Personal Financial Fitness." 5-week series, *University of Washington*, 2002.

"Cyber Coverage." Seattle Chapter, Order of the Gray Goose, 2001.

"Benefits Legislation Update." *Law Office Management Institute*, Seattle, 1999.

"Broker License Preparatory Course, Property & Casualty." *Acordia Northwest*, 1998.

"Broker License Preparatory Course, Life & Health." *Acordia Northwest*, 1998.

"Change Agents." *American Society for Training and Development*, 1998.

"Employee Benefits Issues 1998." *Association of Legal Administrators*, Teleseminar, May 1998.

"Health Care Update: The Impact of Federal Legislation, Part I, HIPAA." *Association of Legal Administrators*, 26th Annual Education Conference, Seattle, May 1997.

"Health Care Update: The Impact of Federal Legislation, Part II, SBJPA." *Association of Legal Administrators*, 26th Annual Education Conference, Seattle, May 1997.

“The Large Print Giveth: Introduction to Insurance Law.” *Seattle Chapter of CLU & ChFC*, 1996.

“The Fine Print Taketh Away: More on Insurance Law.” *Seattle Chapter of CLU & ChFC*, 1996.

Professional Service

Employee Benefit Planning Association, Seattle, Past President

Seattle Chapter of CLU & ChFC, Past-President

American Society of CLU & ChFC, National committee member

Washington Association of Insurance and Financial Advisors, Editor, WAIFA Journal