Elisha Scott, between 1950 and 1959.
For Thurgood Marshall, head of the Legal Defense Fund, the legal arm of the National Association for the Advancement of Colored People (NAACP), the legal terrain in Kansas looked daunting in early 1949. A planned attack on the segregated public schools of Wichita was rapidly disintegrating as the city’s African American teachers, afraid integration would cost them their jobs, launched a campaign to derail the NAACP’s efforts. A second school segregation case in the town of Merriam, southwest of Kansas City, appeared just as bogged down. One lawyer failed to get the job done. A new attorney, Elisha Scott of Topeka, Kansas, took up the case, and won.1

By the time Scott took over the Merriam school case, he was no stranger to Marshall. Throughout the first half of the twentieth century, Scott and a small army of young, ambitious, and committed black attorneys chipped away at the legal scaffolding propping up the culture of Jim Crow. In an era when in many parts of the nation the local courthouse stood not as a symbol of fairness but a place where white sheriffs, judges, and juries winked at nearly every lawless scheme to deny African Americans their rights, Scott dared to take the cases of black clients before white courts. More significant than any scorecard of courtroom wins and losses is the fact that Scott symbolically upset the prevailing structure of racial order in America. His very presence in a courtroom challenged two cherished yet seemingly contradictory beliefs of white supremacists: that a black man was genetically inferior to a white and that under no circumstances should an African American be given the chance to prove the first belief wrong.

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By the end of the 1930s, Scott appeared in books such as *The Colored Situation*, which informed black youth about the range of professional opportunities available to them and sought to inspire them to work towards achieving their dreams. Word that Scott was in town packed courtrooms with both blacks and whites eager to see the spectacle of an African American arguing a case where once only white lawyers rose before a judge. After Scott appeared for the state in a murder case in Tulsa, Oklahoma—which initially stalled due to sharply conflicting evidence—and got a conviction, the black-owned Kansas newspaper the *Plaindealer* commented, “It is said by many older residents of the city that it was the first time that a Negro ever closed a case for the state on such a charge.” Scott’s closing argument, the paper also noted, drew “a large crowd of both races who had long heard of the able Kansas lawyer.” Scott’s fame became so widespread that his office, which seemed to be open twenty-four hours a day, was swamped with pleas for help. Letters were often addressed there simply with “Colored Lawyer. Topeka.”


Elisha Scott was born in Topeka, Kansas, on October 14, 1890. His parents, Jefferson and Diana Scott, came to Kansas from Tennessee, joining thousands of formerly enslaved African Americans fleeing the poverty and night riders of a post–Civil War south determined to restore the order that it had supposedly yielded in defeat with the end of Reconstruction in 1877. They met and married in Topeka in 1883. Settling in a house on Lane Street, Jefferson Scott worked as a laborer, herded cattle, and sold coal by the bushel to support the family. When Elisha was barely five months old, his father died, leaving Diana to put food on the table with the money she took in as a laundress.

There is seemingly little in Scott’s early years that would have suggested his eventual role in dismantling segregation. Yet, Congregational minister Charles M. Sheldon saw something in the child. Sheldon was a constant presence in the black neighborhoods dotting the Topeka landscape and in 1893 started a kindergarten for African Americans, one of the first such programs for any child, black or white, west of the Mississippi River. The Reverend Sheldon took a keen interest in Scott. He bought the young man some decent clothes to wear to school and later helped pay Scott’s tuition to the “Topeka Industrial and Educational Institute,” an all-black high school and vocational school, as Scott himself was struggling to earn money by peddling newspapers and doing odd jobs in order to stay enrolled.

While in his teens, Scott landed a job in the office of black attorney James Guy. If the Reverend Sheldon and Scott’s mother, whose heart was large enough for her to become known as the “neighborhood mother,” helped

3. Kansas State Census, 1885, Shawnee County, Topeka; Kansas State Census, 1895, Shawnee County Topeka; Kansas State Census, 1905, Shawnee County, Topeka; and marriage license issued to Jefferson Scott and Diana Knott, October 10, 1883, Shawnee County, Kansas, Marriages, June 1, 1876–December 31, 1887, microfilm AR 5576, Kansas Historical Society, Topeka.

Elisha Scott, “Colored Lawyer, Topeka”

the young man build emotional muscle, it was Guy who showed Scott that the law could be used to win fair treatment for the disadvantaged when authorities could not always be counted on to exercise their power fairly. Born and educated in Ohio, Guy moved to Kansas in 1884 and established a law office in Topeka the following year. Guy was a founding member of the Topeka Branch of the NAACP and the first president of the local chapter of the National Negro Business League, founded by Booker T. Washington to improve the economic lot of African Americans.

Guy proved quick to take on any demagogue claiming there lay only one path to a virtuous America, a path that blacks often stumbled on. Displaying a fierce pride in his blackness, the lawyer believed that racial unity was an illusion until African Americans could stand on their own two feet. He urged the black community to forge itself into a social, economic, and political force to be reckoned with. “We should recognize our differences,” Guy argued, “and need to establish race pride and confidence” if blacks were ever to expect equal treatment.

While the Reverend Sheldon hoped that the young man might follow in his own footsteps, Scott heard a different calling and entered Topeka’s Washburn University School of Law, where he quickly gained a reputation among the other students for his passion for criminal law. Washburn had been founded in 1865 and its law school in 1903 “by members of the Congregationalist Church on the principle that all people—regardless of race, ethnicity, gender or


6. Topeka (Kans.) Plaindealer, July 20, 1900; Topeka (Kans.) Times Observer, May 28, 1892; and Cox, Blacks in Topeka, 114.
family income—have the right to earn an education.” Only the third African American to earn a law degree from the university, Scott was admitted to the Kansas Bar on June 22, 1916. After a short stint in Guy’s office, Scott hung out his shingle on Kansas Avenue.7

In the courtroom, Scott’s pleadings ranged from a practical lawyer’s acceptance of what he could get when he knew he could get no more to a crusader’s determination to give real faces to the wrongfully accused and the rightfully guilty. He possessed a knack for selecting jurors and evoking old and obscure rules of law to exonerate his clients. He displayed a flair for wringing the truth out of witnesses during cross examinations. Once he got a young black man acquitted of the charge of criminal assault against a white woman by calling the accuser to the stand and, through her testimony, proving his client innocent.8

Early on Scott learned there was no more potent weapon in his arsenal of legal skills than his voice. By the time he graduated Washburn, Scott was already recognized by many, including Governor Arthur Capper, a founding member and first president of the Topeka Chapter of the NAACP, as “the greatest Negro orator in the State of Kansas.” Capper and other Republicans quickly capitalized on the young attorney’s ability to sway an audience. Just two days after passing the bar examination, Scott stood in front of a crowd of African Americans stumping for Republican presidential nominee Charles Evans Hughes. He concluded his speech with a question: why, after loyal blacks had fought to protect the nation’s flag, would that same flag not now protect them under the Woodrow Wilson administration across all the states of the Union?9

Standing before the court, wearing oversized double-breasted suits in an attempt to spread some bulk across his slight frame, Scott’s summations might last three or four hours. He could quote liberally from scripture while his slight frame, Scott’s summations might last three or four hours. He could quote liberally from scripture while suddenly dropping to his knees, his voice rising from a low rumble to a high pitched fervor like a preacher feeling the spirit come upon him. He was a passionate advocate for his clients, who were accused of a wide range of petty and more serious crimes. Scott, who himself had a taste for the spirit, came upon him. He was a passionate advocate for his clients, who were accused of a wide range of petty and more serious crimes. Scott, who himself had a taste for Old Crow whiskey and was known to carry a liberal stock of the drink in a Listerine bottle, could portray an accused bootlegger as a good family man guilty of nothing more than simply mixing some white whiskey and gin with a few friends. He once defended an elderly former slave charged with the first-degree murder of his son-in-law by painting the victim as a wife beater, whom the defendant had warned to stop or suffer the consequences. “Do not send this poor old man who did only what he thought was right,” Scott implored, “to spend his last years in the bondage of a jailhouse as he spent his early years in the bondage of the plantation.” According to journalist Richard Kluger in his study of Brown v. Board of Education of Topeka, Kansas, family lore held that the jury spent no more than two minutes before bringing in a not-guilty verdict.10

There were, of course, plenty of hard-work, low-fee cases: the bootleggers, prostitutes, drunk drivers, petty thieves, as well as those in need of wills, trusts, estates, and other legal busy work. No client, black or white, proved too unsavory for Scott. “All look alike to Scott when it comes to the law,” the Plaindealer once bragged, “color nor money cut no ice with him.” Yet it was Scott’s willingness to take up the causes of African Americans caught in a system where white justice shadowed nearly their every activity, from driving a car to defending against criminal charges, that quickly earned him a reputation as the “young David of his race.”11

But Scott’s legal career also veered into less familiar territory. For example, he was involved in the proceeding that gave rise to America’s first truly professional black baseball teams. In a marathon session at the Paseo YMCA in Kansas City, Missouri, beginning on February 13, 1920, and running into the wee hours of the next morning, Scott and newspaper men from the Indianapolis Ledger and Chicago Defender hammered out the constitution for the National Association of Colored Baseball Clubs, more commonly known as the Negro National League. The following year, Scott secured a charter from the comptroller of currency at Washington, D.C., creating a national bank in the all-black town of Boley, Oklahoma, one of the first African American-owned nationally chartered banks in the nation.12

8. Topeka Plaindealer, May 2, 1919; and Kluger, Simple Justice, 386–87.
10. Topeka Plaindealer, June 30, 1916; May 2, 1919; and April 19, 1920; Topeka State Journal, December 20, 1939; and Kluger, Simple Justice, 385–86.
11. Topeka Plaindealer, April 9, 1920; and July 26, 1929.
While the black ballplayers and Boley bankers represented America’s better self, in courtroom after courtroom, Scott was confronted with the undeniable fact that in much of the country black life remained cheap. In 1920 Scott traveled to Duluth, Minnesota, after three young black men, falsely accused of rape, were dragged from jail by a mob of some five thousand and lynched. In early summer 1921 in Tulsa, Oklahoma, after police and scores of newly deputized thugs invaded the city’s black neighborhood, looting it house by house and setting it afire, Scott took on the backroom bosses determined to push through an ordinance intended to keep black residents from rebuilding. Back in Kansas in 1936, a fifteen-year-old black youth was gunned down while making his way home from a fishing hole by a farmer who claimed the youngster had been stealing chickens; the county attorney was reluctant to prosecute the white man.13

Perhaps at no other time, however, did Scott find his sense of the simple fairness and fitness of things more fray than in the fight to provide African American children with equal educational opportunities. Throughout his life, Scott remained a loyal friend and staunch defender of African American teachers and the children placed in their care every school day. It was Scott to whom the Topeka Colored Parents and Teachers Association turned when local authorities proved slow to move after a six-year-old girl was snatched on her way home from school, taken into the weeds, and raped. Several years later when a local newspaper ran an editorial questioning the dedication and competence of the city’s black teachers, those teachers asked Scott to go before the Topeka School Board to force a public statement condemning the unwarranted attacks. Teachers and parents also looked to Scott when they found themselves having to depend on something they sometimes found undependable—the benevolence of an all-white school board.14

Such benevolence seemed abundant in Coffeyville, Kansas, when in 1920 the school board launched a crusade to win public approval and funding for a new junior high school offering grades seven through nine. Campaigning to win the black community’s support, the board promised that “all pupils who have made the necessary grades, regardless of race” would be allowed to attend.15 In September 1923 the new Roosevelt Junior High School opened. Despite the promises made to the city’s black community, the board of education designated the Roosevelt building for white students only, leaving black students to attend either the all-black Cleveland School or integrated Washington School.

Accordingly, on September 18 when Victoria Thurman arrived at Roosevelt to enroll in the ninth grade, the principal refused to admit her, instructing the student to report to the Cleveland School. Cleveland housed only grades one through eight, so any older students sent to the school were forced to sit in the seventh and eighth grade rooms and were not permitted to attend domestic science or music classes because Cleveland offered them only to students in the lower grades. The school building itself was also subpar. An inspection of the basement revealed numerous fire hazards. Lavatories often overflowed, with the smell lasting for two or three days afterwards. Space was at such a premium that a cloak room was outfitted with folding chairs to serve as a classroom for recitation.16

Celia Thurman-Watts, Victoria’s mother, filed suit on September 21, 1923, in the Kansas Supreme Court requesting that her daughter be admitted to Coffeyville’s new school. Three days later, thirteen African American parents also seeking their children’s admittance to Roosevelt defiantly refused to send their children off to school at Cleveland or Washington and were arrested.17

14. Topeka Plaindealer, October 4, 18, and December 27, 1929; February 21, 1930; and October 16, 1931; Topeka (Kans.) Daily State Journal, February 20 and 25, 1930; Capital Plaindealer (Topeka), February 28 and March 7, 1937; and Topeka, Kansas, Board of Education Minutes, March 8, 1937; McKinley Burnett Administration Building, Unified School District 501, Topeka Public Schools, Topeka, Kansas (hereafter cited as “Topeka, Kansas, Board of Education Minutes”).
16. A detailed analysis of the Coffeyville case appears in Jamie B. Lewis, “Protecting White Privilege: A Legal Historical Analysis of Desegregation in Kansas, 1881–1951” (PhD diss., University of Georgia, 2004), 146–82. See also “Facts About Our School Situation,” 1, 22; Coffeyville (Kans.) Morning News, September 25 and October 3, 1923; and Mattie Cartwright, Junior Division, Coffeyville NAACP, to James W. Johnson, Executive Secretary, NAACP, September 24, 1923; and Millie C. Anderson, Secretary, Coffeyville NAACP, to Johnson, October 22, 1923, Kansas NAACP Branch Office Files, Coffeyville, Papers of the NAACP, microfilm MS 1386, State Archives Division, Kansas Historical Society, Topeka (hereafter cited as “Papers of the NAACP, KHS”).
In the case that followed, the question confronting the court revolved around whether the ninth grade was considered an elementary grade or part of high school. Kansas law was vague on the subject, never specifically defining what grades constituted middle or junior high schools. The law provided only that it was permissible for boards of education in cities of the first class such as Coffeyville—those with populations of fifteen thousand or more—to establish separate elementary schools for black and white children. There would be no separation of students by race in high school unless such authority was specifically granted by statute, such as in the case of Kansas City.\(^{18}\) To establish that the ninth grade was the first year of high school, Scott and his law partner and brother-in-law, R. M. Van Dyne, called Coffeyville School Superintendent A. I. Decker to the stand. It took Scott six attempts but he finally got Decker to concede that he and other educators considered the ninth grade as the first grade in high school.\(^{19}\)

Not content to merely base his case solely on what grades Superintendent Decker or other school districts considered as constituting high school, Scott attempted to show that the motives of the Coffeyville School Board had less to do with following sound educational policy than blatant racism. Scott charged that Decker and all but one board member belonged to the Ku Klux Klan and were “maliciously prejudiced” against the plaintiff and her mother. The plaintiff’s attorneys then turned the defendants’ own brief against them to support their charges. To counter Thurman-Watts’s allegations that the Cleveland School provided less than sanitary conditions, the school board’s attorneys had written in their brief that they found it “amusing” to hear “some of these old colored men and women, who had not taken a bath in the past ten years and whose personal odor would almost knock you down,” complain that the Cleveland School facilities were not clean. The lawyers went on to note “that we have yet to see as many as two hundred and fifty or more colored children assemble in one building and have the air absolutely free from all noxious odors.”\(^{20}\)

The Kansas Supreme Court handed down its decision on January 25, 1924. Agreeing that it was commonly understood that ninth grade constituted part of the high school, the court ruled that until the state legislature established a definition of high school that did not include the ninth grade, the Coffeyville Board of Education lacked the power to segregate students in that grade on the basis of race. Three days later, Victoria Thurman, accompanied by her mother, presented herself at the Roosevelt School for admission into the ninth grade.\(^{21}\)

The African American community hailed the victory. Topeka’s Plaindealer told its readers Scott “argued the case before those seven Supreme judges as though he was skating on ice,” and his words “flowed so easily and precise that the attention of the entire court was attracted by his forceful argument from start to finish.” The NAACP, which threw its name and support behind the case, also lauded the decision as a victory, not only for the people of Coffeyville but for the entire state of Kansas. The group noted that “it was a just cause” and proof of what could be accomplished when “we will stand together and fight to the finish.”\(^{22}\)

Although Scott remained a loyal foot soldier in the NAACP, serving as the president of the Topeka chapter for several terms in the mid-1930s, his relationship with the organization was sometimes thorny at best. In some cases, Scott’s breaking with NAACP policy came down simply to his allegiance to his clients, who did not always see desegregation as the sole remedy for educational inequality. In August 1930 the Cherokee County Branch of the NAACP retained Scott to force the local school board to hire more teachers for the segregated Baxter Springs elementary school, where thirty African American children in grades one through eight were taught by one teacher. To the NAACP leadership in New York City, the case was cut and dried. Baxter Springs was not a city of the first class and therefore operated a dual school system in violation of Kansas law. The black parents of Baxter Springs, however, showed little enthusiasm for mixed schools, requesting only that their children be provided with equal facilities and that an additional teacher be hired.

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20. Petition Papers, Thurman-Watts v. Board of Education case file, 5; and Lewis, Protecting White Privilege, 162.


22. Topeka Plaindealer, January 11, 1924; and Anderson to Robert Bagnall, Director of Branches, August 11, 1924, Kansas NAACP Branch Office Files, Coffeyville, Papers of the NAACP, KHS, microfilm MS 1386.
Unable to serve two masters, Scott refused to initiate a desegregation suit. In deference to his client’s wishes, Scott went before the school board and demanded only that an additional teacher be hired for the black school, threatening a court action if they refused to comply. The national office argued with the local branch, hoping to inspire them and convince the city’s black population that two teachers, “no matter how efficient,” could not teach all eight grades even in a properly equipped school. It was unwise to accept a separate school, the national office argued, but the black parents of Baxter Springs remained unconvinced and, in fact, seemed intent on not “having anything to do” with the organization.23

Also tugging at Scott’s conscience was concern over whether the NAACP’s ultimate goal of an end to segregated public schools always improved the lot of black children and their teachers. The NAACP was aware that a successful fight for desegregation would likely result in the loss of jobs and that “Negro teachers are going to suffer more than white.” Yet, even though Scott wore his hatred of Jim Crow on his sleeve, he could never get fully on board with those who argued that “the elimination of legally enforced segregated schools should outweigh in importance the loss of teaching positions.” He remained mindful that a black parent, concerned that an assault on segregated education could result in the closure of a neighborhood school or the firing of a neighborhood teacher, might prefer to wait longer for a solution than was permitted by the single-minded policy of the NAACP.24

23. Robert Bagnall to Mrs. Sadie E. Clay, Secretary, Cherokee County Branch, NAACP, July 17, 1930; Clay to Bagnall, August 7, 1930; William T. Andrews, Special Legal Assistant, NAACP, to Elisha Scott, September 15, 1930; Scott to Andrews, September 18, 1930; Bagnall to Clay, September 24, 1930; Bagnall to D. W. Hurt, President, Cherokee County Branch, NAACP, September 30, 1930; and C. J. Evans, Secretary Baxter Springs NAACP, to Bagnall, November 1, 1931, Kansas NAACP Branch Office Files, Baxter Springs, Papers of the NAACP, KHS, microfilm MS 1386.


In January 1940 Oaland Graham, Jr., presented himself for admission to Boswell Junior High School in Topeka, pictured, and the principal denied him admission on the basis of his race. Oaland’s father filed a request with the Kansas Supreme Court that his son be admitted to the school. Although the court ruled for the plaintiff the following year, with the chief justice noting “it will not do to say to one American citizen you may not have the benefits of an improved method of education because of your race,” the ruling did not deal with the broader issue of wholesale desegregation.

The situation came to a head on January 29, 1940, when Oaland Graham, Jr., presented himself for admission to Boswell Junior High School in Topeka and the principal denied him admission on the basis of his race. That same day Oaland’s father, Ulysses S. Graham, filed a writ of mandamus in the Kansas Supreme Court, requesting his son be admitted to the school. At issue was the system used to assign white and black students to an appropriate grade. The Topeka School Board assigned white students to junior high schools for grades seven, eight, and nine but kept African American students in black elementary schools through eighth grade, then integrated junior high schools for ninth grade only.

William Bradshaw and Tinkham Veale, representing Graham, challenged the system of school assignment based on skin color. The Kansas Supreme Court announced its decision on June 13, 1941. Concluding that the policy of keeping African American children in the
Topeka attorney, Raymond Reynolds, lodged a complaint with the national headquarters of the NAACP that a recent election of Topeka Branch officials was “packed for a definite purpose” by teachers who hoped to forestall full integration. The person the teachers held “selfishly at the head of the branch for their particular purposes” was Elisha Scott.27

On June 23, 1941, Scott appeared before the board of education as the head of a delegation of black parents and teachers. “The time is not ripe” for full integration, Scott argued. Knowing that white Topeka would not yet tolerate a situation in which black teachers stood up each morning in front of white children, Scott expressed concern for those black teachers who might be displaced by full integration. Turning his attention to the children, Scott voiced the uncertainty and apprehension of black parents about integrating their children into white schools, fearing that they might be subject to hostility or develop feelings of isolation and estrangement. As expressed by another member of the delegation, the majority of Topeka’s black parents found “it was not so pleasant for colored children to attend schools maintained for whites,” as they

African Americans in Topeka and throughout Kansas were not of one mind on the question of school desegregation. The issue was complicated, as it involved not only equal educational opportunities for the state’s children, but also fair employment practices for teachers and maintenance of neighborhood school buildings. Many African American teachers and their supporters followed school segregation cases nervously, as they feared the potential loss of positions. Pictured are Topeka’s African American teachers in 1949, courtesy of the Kansas Collection, Spencer Research Library, University of Kansas, Lawrence.

elementary schools longer than white children violated black children’s right to equal educational opportunities, the court ruled in favor of the plaintiff. “It will not do to say to one American citizen,” noted Chief Justice Harry K. Allen, “you may not have the benefits of an improved method of education because of your race.”25

While the Kansas Supreme Court determined that Oaland Graham was entitled to enter junior high school in the same grade as white children, it did not deal with the broader issue of wholesale desegregation. The court held only that if Topeka provided junior high schools for white children, it must do the same for blacks, and retained jurisdiction only “for such specific orders as may be necessary.”26

Topeka’s black teachers, fearing the potential loss of positions should the higher grades be removed from the elementary schools, watched Graham v. Board of Education unfold nervously. So determined were a number of Topeka’s black teachers to safeguard their jobs that an irate


27. Raymond Reynolds to Roger Wilkins, NAACP, September 2, 1941, Kansas Branch Office Files, Papers of the NAACP, KHS, microfilm MS 1394.
could develop an “inferiority complex” leading them to drop out of school and “into trouble of various kinds.”

Rather than shove integration down the throats of black parents, Scott recommended that parents be granted the discretion to send their children to any junior high school of their choosing but that their options be expanded by establishing an all-black junior high school.

Others, just as passionately, disagreed. A committee chaired by attorney Reynolds fired back, resolving to wage an “unrelenting fight in behalf of the children.” Reynolds, at the head of “forty other likeminded residents,” condemned the plan offered by Scott as being designed only to “save a few colored teachers their jobs at the sacrifice of the rights assured to the children under the court’s decision.” Scott countered, asking to go on the record again “against any discrimination between white and colored children but in favor of segregation, for the present time at least, with equal facilities and accommodations.” He presented the results of a survey he had taken showing that 65 percent of Topeka’s black parents favored their child attending an all-black school. Attorney Bradshaw also reentered the fray, and filed a complaint on July 25 pressuring the school board to fully integrate the city’s junior high schools. He charged that the board, “instead of willingly carrying out the judgment and decision of the court have attempted to avoid the same” by continuing inquiries into “the sentiment of interested parents of colored students as to their desire to continue the system complained of . . . and previously decided by this court to be unlawful.”

The board of education, fearful of judicial wrath, sided with Bradshaw and Reynolds and desegregated Topeka’s junior high schools. The first black teachers fired were not those who had taught the higher grades in black elementary schools. Instead, they were teachers related to or who had connections with the lawyers or witnesses participating in the case, including Bradshaw’s sister, Maytie, a veteran teacher of eighteen years. In all, six black teachers lost their positions, and two more were reduced to half time.

Scott was firmly back on board with the NAACP’s agenda in his next school case. On May 24, 1948, attorney William Towers, representing a group of black parents in the Kansas community of South Park, just outside the town of Merriam, filed Webb v. School District No. 90 Johnson County with the Kansas Supreme Court, seeking an order to admit their children to South Park Elementary School. South Park was one of two elementary schools serving children in the district. The other school was known as the Walker School. The school board adopted attendance zones whereby white students attended South Park Elementary and black students attended Walker School.

The nine-room South Park School, built in 1947, contained an auditorium, cafeteria, and indoor restrooms and employed ten full-time teachers and one part-time teacher. The Walker School was housed in a sixty-year-old, two-room building and employed two teachers. Every time it rained hard, the basement flooded making the furnace inoperable. The school was often closed for one or two days at a time; in the words of one of the plaintiffs, the children were sent home because “they couldn’t pump it [the water] out fast enough.” African American parents challenged the power of the school district to segregate schools on the basis of race and the district’s failure to provide equal educational facilities.

Parents whose children had been denied admission to the newer South Park School found a fierce advocate in a thirty-year-old, white, Jewish housewife: Esther Brown. Brown went on a one-woman crusade to force the school board to grant black demands. She had a real flair for fund-raising and waged a relentless campaign to gain support for the cause, writing letters and speaking before community groups, churches, fraternal orders, and local NAACP branches. A spokeswoman and worker for black consensus, it was Brown who suggested that if South Park organized a local chapter of the NAACP, its demands would receive the backing of the national organization and be taken more seriously by the school board. It was also Brown who “persuaded all but two black parents to boycott the segregated Walker School,” and instead set up temporary school rooms in their homes and hire two teachers to oversee them.

28. Plaindealer, July 4, 1941. This item, and one pertaining to the subsequent meeting of the Reynolds group, appeared under the page-one title “Topeka Citizens Divided on Equal School Verdict” in the Topeka edition of the Plaindealer, which was published in Kansas City, Kansas.

29. Topeka, Kansas, Board of Education Minutes, June 23 and July 7 and 11, 1941; “Application for Consent to Re-file and Argue Motion for Damages and Attorney’s Fees,” Graham v. Board of Education of City of Topeka case file, 1; and Plaindealer, July 4, 1941.


Almost from the beginning, Brown was impatient and exhibited little confidence in William Towers. She complained that progress was agonizingly slow while the attorney seemed capable only of making excuses and demanding “an outrageous amount of money” to pursue the litigation. On August 11, 1948, the local branch of the NAACP hired Elisha Scott to handle the case. Although Towers might have been inclined to accept a previous offer made by the Johnson County School Board, “to settle this matter on a reasonable basis” through an outlay of cash to improve Walker and provide “the very best teachers available,” Scott was in no mood to compromise. He demanded the case be heard before the school term commenced in September.33

The case, however, still moved at a snail’s pace. The commissioner appointed by the Kansas Supreme Court to take depositions requested a continuance until the March term due to illness. On no less than three occasions Scott found himself sitting in an empty office as judges cancelled appointments at the last minute to care for a sick spouse or child. The local district court refused to issue a temporary injunction to enroll the black children in South Park Elementary on the grounds that they did not have jurisdiction in the case and were not convinced that an emergency existed when there was a school the black children could attend.34

As the case ground to a halt, Scott, like Towers, ran afoul of Esther Brown. She bombarded the NAACP offices in New York with a litany of complaints. She railed that Scott had made a lot of promises but had fulfilled none, conjecturing that perhaps the “case is more than he [Scott] anticipated and more than he can handle.” She fumed about Scott not responding to requests for updates while things seemed to get misplaced on his cluttered desk that should not have. More troublesome to Brown was Scott’s fondness for alcohol, which elicited her complaints about the lawyer usually being “self ‘soused.’” Esther Brown’s husband, Paul, later recalled that his wife described Scott as “disorderly and unorganized and an almost full-time drunk,” who, although really caring about the cause,


seemed most concerned about money to cover legal and travel expenses. 35

Faced with the barrage of complaints, Thurgood Marshall’s office asked Kansas City, Missouri, attorney Carl Johnson to meet with Scott, examine the case, and, “without irritating Scott,” or as Esther Brown put it, “without Mr. Scott knowing it,” render an opinion as to Scott’s competence to continue. Johnson traveled to Topeka, and a short time later sent his findings to the NAACP. Johnson reported that the delays could not be ascribed to any lack of diligence on Scott’s part, noting that Scott was a “very busy and capable attorney” and “is the most outstanding trial attorney in this section.” Brown’s concerns, however, were not easily laid to rest. She felt that Johnson had not rendered an “entirely true opinion” of Scott and remained convinced that Scott, “as good a lawyer as he is,” needed “experienced advice” in pursuing the case. 36

When Scott finally got his day in court, his sons Charles and John, whom had both graduated Washburn Law School, stood beside him. The Scotts charged that Johnson County School District No. 90 had operated a dual school system in violation of Kansas law granting such authority only to cities of the first class and that the school district had failed to provide the black students with educational facilities equal to those enjoyed by white students. Finally, the Scotts argued that the school board had arbitrarily established school-attendance zones solely to give a legal face to their practice of segregating children on the basis of race. “The line of demarcation as between the whites and the Negroes,” the Scotts charged, “is clearly a fraud and [was] wrongfully perpetrated by the school board.” 37

Reviving the strategy used in the Thurman-Watts case, Scott raised the specter of racism, evoking images of the proslavery Missouri Border Ruffians, who a little less than a century earlier had invaded Kansas Territory, forged a government at Lecompton that brought its wrath down on any who preached the free-state cause, and threatened to lead Kansas into the Union as a slave state. The Scotts painted a picture of Edwin Campbell, principal of both the South Park and Walker schools, as “a Missouri product,” who assumed “the position of a dictator because it cannot be questioned that he tells the members of the school board just what to do and when to do it, especially with reference to the two races.” Going straight for the throats of the white educators, the lawyers indicted them for their complicity in perpetuating a new kind of slavery by maintaining a system designed to deny African Americans access to social, economic, and political resources and privileges. They urged the justices to not only grant relief to their clients but to continue to denounce white privilege by adhering to the court’s “previous stand for justice and fair play to all people regardless of creed, color, or previous condition of servitude.” 38

On June 11, 1949, the Kansas Supreme Court handed down its decision. The court found that Johnson County School District No. 90 had, for generations, operated segregated schools without legislative authority to do so. They further found that the established attendance zones were a clear act of subterfuge, drawn “not on a reasonable basis” but with the intent to keep black children separate from white children. The court ordered the school district to admit all school-age children to South Park School for the 1949–1950 school year. 39

For Thurgood Marshall, who by 1949 was listed as an attorney of record along with the Scotts in the case, the victory was not the major advance toward fully ending segregation in the nation’s public schools he hoped it might be. Even though the plaintiffs had alleged a violation of their due process rights afforded by the Fourteenth Amendment of the Constitution, the Kansas Supreme Court decided the case solely on the grounds of state law and did not address the constitutional issues. The decision left no grounds for appeal because the court had found in favor of the plaintiffs.

Marshall, however, had something else up his sleeve. If the Kansas court had decided in favor of the school district in the Webb case, it is likely that it would have appeared on the United States Supreme Court’s docket. As early as 1948, Marshall and his staff believed that the peculiarity of the Kansas law, which did not mandate segregation but provided school boards only with the discretionary power to establish a dual school system, presented “an excellent opportunity to break down once

38. Ibid., 74.
and for all segregation which has been arbitrarily . . . practiced by local school boards.\textsuperscript{40}

That same year at the NAACP’s annual conference held in Kansas City, Missouri, Marshall met with representatives from several of the Kansas branches to discuss the possibility of instituting a lawsuit that would attack the constitutionality of the “separate but equal” doctrine that had been the law of the land since the Supreme Court’s 1896 decision in \textit{Plessy v. Ferguson}. Although the Topeka Branch made a bid for the Kansas case, the Executive Board of the Kansas State Conference of NAACP Branches voted in October 1948 to pursue a test case in Wichita. In no small part the decision was based on the fact that the lawyers who would provide the boots on the ground needed to put together a case in Topeka were Scott and his sons, then tied up in the \textit{Webb} case.\textsuperscript{41}

Selected Branch Files, Kansas State Conference of NAACP Office Files, 1940–1955, Papers of the NAACP, KHS, microfilm MS 1394.


41. “Error to the Supreme Court of the State of Louisiana, \textit{Plessy v. Ferguson},” 163 U.S. 537 (1896); Franklin Williams to Thurgood Marshall, memorandum, September 9, 1948; Gloster B. Current to Director of Branch and Field Services, NAACP, to A. Porter Davis, President, Kansas State Conference of NAACP Branches, September 15, 1948, Selected Branch Files, Kansas State Conference of NAACP Office Files, 1940–1955, Papers of the NAACP, KHS, microfilm MS 1394.


Despite the NAACP branches’ decision, once the \textit{Webb} case was decided the Scott law firm, which now included Charles Bledsoe, began putting together a case in the capital city. Meanwhile, the planned Wichita case went nowhere. In August 1950, after a final frustrating appeal to the Topeka Board of Education to voluntarily integrate the city’s public schools, the local branch of the NAACP informed the national office they were prepared to test the state segregation law in federal court. On June 25, 1951, a cadre of attorneys—including John and Charles Scott, Charles Bledsoe, and, from Thurgood Marshall’s staff, Jack Greenberg and Robert Carter—arrived in U.S. district court in Topeka to demand the total and immediate desegregation of the city’s public elementary schools. As his sons moved into the fight, Elisha Scott’s name did not appear as an attorney of record in the complaint.

Shortly after the court reconvened following a lunch recess, as education expert Hugh Speer, one of the plaintiff’s principal witnesses, was testifying, the elder Scott suddenly appeared. It was apparent to all in the courtroom that Scott’s drinking had overtaken his sense of lawyerly decorum. Sweating profusely, Scott removed his coat, sat down next to his sons, and immediately raised an objection to one of Speer’s answers. Although Scott’s sons were noticeably embarrassed, presiding judge Walter A. Huxman, who knew Scott well, handled the situation delicately. He overruled the objection and declared a brief recess so the aging lawyer could be quietly ushered out of the courtroom. Huxman later smoothed things over with the other two judges on the panel, forestalling any notion they may have had about slapping a contempt of court charge on Scott.\textsuperscript{42} Bound by the U.S. Supreme Court’s

\begin{figure}
\centering
\includegraphics[width=\textwidth]{WalkerSchool.jpg}
\caption{At issue in South Park were attendance zones that sent white students to the new nine-room South Park Elementary School, equipped with an auditorium, cafeteria, and indoor restrooms, and staffed by eleven teachers. Black students, however, were placed in the Walker School, housed in a sixty-year-old, two-room building staffed by two teachers. The school had only outhouses, and when it rained hard the basement flooded making the furnace inoperable. Pictured above is the exterior of Walker School and, at right, one of the school’s two rooms, which served as a combination classroom and auditorium.}
\end{figure}
“separate but equal” ruling in the 1896 *Plessy* case, the court reluctantly found in favor of the school board, clearing the way for an appeal to the U.S. Supreme Court.

In the U.S. Supreme Court on May 17, 1954, Chief Justice Earl Warren read the unanimous decision that found for the plaintiffs in five school segregation cases litigated concurrently as *Brown v. Board of Education*. Shattering the nearly sixty-year-old precedent established in *Plessy v. Ferguson*, the court concluded: “in the field of public education the doctrine of . . . ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”

While these two sentences by implication would provide the basis for reversing public policy in all areas of life where segregation had been given legal sanction, the *Brown* decision did not immediately end public school segregation. In 1955 the Supreme Court again considered arguments by the states named in *Brown*, which now requested relief concerning the task of integrating public schools. In a unanimous decision that came to be known as *Brown II*, the court recognized the wide range of problems local school boards would encounter if the NAACP's demand for total and immediate integration of the educational system was met. The *Brown II* opinion avoided setting any time limit for compliance by remanding the cases at issue to the district courts with instructions that schools that had barred African Americans now had to move to admit them “with all deliberate speed.” The court thus established good faith as the test of compliance, rather than the degree of integration at any given time. The decision allowed states, particularly in the South, to forestall full integration for years.

Despite the tolls of age and drink, when the stakes were high and somebody’s life or liberties hung in the balance, Elisha Scott still possessed an inner discipline that allowed him to pull himself together and resume the fight. In 1962 he took on his last school segregation case representing twelve Kansas City, Kansas, African American students turned away from Northwest Junior High School and instructed to enroll in the still all-black Northeast Junior High School “because of their race and color.” Although in August 1954 the city’s board of education had initiated a policy to integrate its school system “as rapidly as classroom space can be provided,” by the beginning of the 1961–1962 school year, eleven of the city’s thirty-one elementary schools were still overwhelmingly white, while Northeast Junior High and Sumner High School remained virtually all black.

Working with the NAACP’s Robert Carter, Scott and his cocounsel charged that racial imbalance in the Kansas City schools was “unlawful, malicious and arbitrary,” depriving the students “of their rights under the Constitution and Kansas laws.” At issue were allegedly race-based school-attendance zones adopted in 1960
and a “feeder school policy” requiring that students move from their often segregated elementary schools into specific, and again largely segregated, junior and senior high schools. While the new zones did place some black children in previously all-white schools, just under three-quarters of African American students remained in schools that were predominantly black.46

As tempers flared and parents refused to be simple bystanders, the board of education sought a restraining order to prevent any of the plaintiffs from staging sit-ins or demonstrations on school property. In mid-September 1962 one black couple refused to send their three children to school and instead started a school in their home, not only for their own children but six other children of like-minded parents. Brought into city court on a truancy charge with Scott at their side, the parents argued that their children “were being made mentally ill” by their forced attendance in a segregated school. The judge found the parents guilty and fined them twenty-five dollars. Scott filed an appeal the next day.47

47. Kansas City Kansan, September 14 and December 12, 1962; and January 7 and 8, 1963.
Scott never saw the Kansas City segregation case through. In late October the NAACP put the case on hold, awaiting the U.S. Supreme Court’s decision in a Tennessee case examining the constitutionality of a transfer system designed to block the full-scale desegregation of the state’s schools. In April 1963 Scott entered the University of Kansas Medical Center to undergo exploratory surgery, which revealed he was suffering from cancer. On April 23 Elisha Scott died.  

Scott learned early on that hand wringing was a poor response to a challenge. Upon his death he was widely hailed as a man who fought for all downtrodden people and “a pioneer in the movement to bring about an end to segregation in the schools.” He saw the law as a powerful weapon that could and should be used to advance the cause of any whose freedoms and rights were in jeopardy. Scott was not in the courtroom when nine justices took their seats behind the long mahogany bench of the U.S. Supreme Court and answered a question that had plagued the nation since Thomas Jefferson wrote that “all men are created equal”: where and how should African Americans be educated? Yet it was Scott and a handful of dedicated black and white attorneys who first breached the wall of segregated justice and demanded equal educational opportunities and justice for all citizens.

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