

2000

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Frank H. Wu

*UC Hastings College of the Law*, wuf@uchastings.edu

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## Recommended Citation

Frank H. Wu, *Robert Lee Carter Continuing the Struggle for Civil Rights*, 27 *Human Rights* 16 (2000).

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# Robert Lee Carter

## Continuing the Struggle for Civil Rights

By Frank H. Wu



Photo courtesy of NAACP Legal Defense Fund

**U**nited States District Judge Robert Lee Carter is still working to ensure that the precedent set by *Brown v. Board of Education* in 1954 will be given effect fifty years later. As an assistant to the late Thurgood Marshall at the NAACP Legal Defense Fund in New York, Carter was listed on the briefs in perhaps the most significant constitutional decision ever rendered. His abiding commitment to racial equality, which started when he personally integrated New Jersey's East Orange High School pool (despite his own inability to swim), is what drives his continued efforts to achieve racial justice.

### From Howard to Marshall

Carter attended the all-male, historically black Lincoln University, in Pennsylvania, before enrolling at Howard University Law School, in Washington, D.C. Law school had not been his first choice. He had planned to attend graduate school in political science but could not afford to do so. He was offered a scholarship for law school, so he decided to try it. He did well at Howard and was a part of the brain trust associated with the law school, which included such other legal luminaries as Charles Hamilton Houston, Spottswood Robinson III, and William Hastie. In fact, Carter did so well that Hastie, then the dean of the law school, recommended him to Marshall, who was then working with virtually no staff. Carter joined Marshall at the NAACP Legal Defense Fund after finishing what Richard Kluger describes in his book *Simple Justice* as "a stormy career" in the U.S. Air Force. According to Kluger, "[Carter's] insistence that black officers were entitled to every privilege that white officers enjoyed got him branded a troublemaker."

Over a fifteen-year career as the chief assistant to Marshall, Carter played a central role in all of the major desegregation cases of the era, with a spectacular record of twenty-one victories in twenty-two appearances before the high court. Working on the litigation that would eventually bring an official end to racial segregation, Carter was responsible for assembling the team of expert witnesses who demonstrated the negative effects of "separate but equal." In 1952, he helped draft a major statement representing a consensus of leading social scientists who detailed the effects of segregation. At trial, he examined leading professor after professor who testified to the concrete manifestations of prejudice.

Accompanying Marshall—who was then known as "Mr. Civil Rights" for his courtroom victories—Carter "usually argued for the most aggressive position possible." He persuaded Marshall to challenge an order to turn over the NAACP membership list. Although the outside lawyers with whom they consulted supported Marshall's desire to comply, the lay members of the NAACP Board backed Carter's position to risk the \$100,000 penalty of refusal. Carter's approach ultimately prevailed when the Supreme Court accepted his First Amendment arguments against compliance.

### The Legacy of *Brown*

A co-founder of the National Conference of Black Lawyers, Carter also is a scholar. He has taught at Michigan, Yale, and New York University. Most recently, he held the Haywood Burns Memorial Chair at the City University of New York. Beginning a series of scholarly articles, Carter published an explanation of the *Brown* decision the year after it was handed down. In the *Journal of Negro Education*, he called the unanimous opinion "a ticket to desegregation, which is now available to every

parent and child who needs it and wants to use it." He recognized that it would require considerable further work, concluding that "it is important that the strongest pressures against the continuation of segregation . . . be continually and constantly manifested." He predicted, "Probably, as much as anything else, this is the key to the elimination of discrimination in the United States."

Forty years after *Brown*, at a forum at New York University, Carter said that *Brown's* words had become "an arid abstraction, having no effect whatsoever on the bleak educational offerings black children are given in the deteriorating schools they attend." He said the progress that had been made was "dismal."

Carter also has been outspoken on such racially charged incidents as the beating of black motorist Rodney King by Los Angeles police officers. He has criticized the criminal justice system for the disproportionate incarceration of black men. If whites were sent to prison in similar numbers, he has said, there would be "howls of protest." The statistics "bespeak of suppression and subjugation with patently racist implications," he believes.

### A Man of Principle

Carter is a man of principle. He has lived by these principles even when doing so could cost him his life. He once had a showdown with Southern Sheriff Cecil Price in Philadelphia, Mississippi, who disrespectfully called him by his first name. Despite the fact that Price was backed by an angry mob of whites, many of them armed, Carter told him that "only my best friends call me by my first name and I don't think I know you that well." When Price, who was later convicted on charges arising from the multiple murders of three civil rights workers in 1964, told him, "that's how we do it down here," Carter decided to return the familiarity by referring to the law enforcement official as "Cecil."

In other instances, Carter has sacrificed his livelihood for his principles. Carter resigned from the NAACP in response to the organization's firing of a white lawyer named Lewis Steel, who had written a controversial article about the Supreme Court entitled "Nine Men in Black Who Think White" for the *New York Times Magazine*. He reportedly turned down a federal judgeship

earlier in his career (although he ultimately took the bench in 1972) because he was unwilling to make a campaign contribution in exchange for the appointment. He also gave up his New York Knicks season tickets when his job required him to adjudicate player Oscar Robertson's antitrust challenges to the draft system.

### Continuing the Fight

At the age of eighty-three, Carter recalls his work as a lawyer fondly but believes that the fight must continue. Speaking by phone from his judicial chambers, Carter said, "I think that since I was in law school, there's been a great change. When I was in law school, the whole emphasis was on civil rights that were only violated in the South because of segregation. It wasn't recognized as a national issue."

"The most important issue for me has been equal education opportunities for black kids," Carter said. "That hasn't changed. That's become more critical. Many of the law review articles I've written have been based on pursuing this issue of equal educational opportunities: how we can do it, where *Brown* has come up short, what needs to be done, and so forth."

Yet Carter believes that some of the racial issues have changed. "There's fallout from the *Brown* decision. Black people are more militant," he said. "They feel they have a right, a legal right, to equal opportunity. In the North, before *Brown*, it was based on white majorities and their morality and their religion. The right to equal citizenship is

founded in the Constitution and the law, and it doesn't depend on whether somebody is going to give it to you."

Carter notes that new issues have been added to the progressive agenda. "The issue of gender discrimination, I don't think that was considered on the front burner when I was in law school," he continued. "All these kinds of issues of minorities, all kinds of minorities, have come on the front burner since *Brown*, and since the NAACP took these cases. Women and all the other displaced minorities have been encouraged by *Brown*."

Carter has surprising advice for law students. He says, "I don't think that [black kids in particular] should be going in school and concentrating on civil rights. They should get a firm grounding in law, where they will be able to be first-rate lawyers. They will find some civil rights issues if they're in corporate law or environmental law. If blacks concentrate on civil rights alone, that would be a mistake."

All lawyers interested in civil rights, however, would do well to follow Carter's example of excellence. As a lawyer and a judge, he is an example of how personal integrity and legal reforms can change society.

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*Frank H. Wu is an associate professor of law at Howard University Law School, in Washington, D.C.*

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*Author's Note: I would like to thank reference librarian Stephanie Dyson of Howard University for her research assistance on this article.*

### Robert Carter's Other Notable Supreme Court Cases

- *McLaurin v. Oklahoma State Regents for Higher Education*: preceded *Brown*; struck down segregation in graduate school education
- *Shepherd v. Florida*: overturned a criminal conviction because of racial discrimination in jury selection
- *NAACP v. Alabama*: allowed the NAACP to protect the anonymity of its membership
- *Comillon v. Lightfoot*: dealt with racial gerrymandering of electoral districts
- *NAACP v. Button*: successfully challenged Virginia statutes preventing the NAACP from providing legal counsel
- *Griffin v. Prince Edward County*: post-*Brown* case involving school segregation in Virginia
- *Hunter v. Erickson*: successfully challenged an Ohio charter amendment that allowed racial discrimination in housing